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ABSTRACT OF THE PROCEEDINGS

OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

1890,

WITH INDEX.

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TO

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Government of India Central Printing Office.—No. 418 L. D.—13-1-91.—308.—R. B.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 3rd January, 1890.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C., C.S.I.

The Hon'ble Sir C A. Elliott, K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of Vizianagram.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Durga Churn Laha, C.I.E.

The Hon'ble G. H. P. Evans.

The Hon'ble Muhammad Ali Khan.

The Hon'ble R. J. Crosthwaite.

The Hon'ble Sir A. Wilson, Kt.

ACT XXV OF 1867 AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved that the Bill to amend Act XXV of 1867 (*Printing-presses and Books*) be referred to a Select Committee consisting of the Hon'ble Mr. Scoble, the Hon'ble Syud Ameer Hossein, the Hon'ble Mr. Crosthwaite and the mover, with instructions to report within two months.

The Motion was put and agreed to.

CENTRAL PROVINCES CIVIL COURTS ACT, 1885, AMENDMENT BILL.

The Hon'ble MR. CROSTHWAITE moved for leave to introduce a Bill to amend the Central Provinces Civil Courts Act, 1885. He said:—

"The measure, my Lord, which I ask leave to introduce is a very simple one

and is intended to facilitate the disposal of business by the Civil Courts in places where there are Courts which have the powers of Courts of Small Causes. Section 13 of the Central Provinces Civil Courts Act, 1885, empowers the Chief Commissioner to confer upon the Court of an Assistant Commissioner of the first or of the second class the jurisdiction of a Judge of a Court of Small Causes in suits of a value not exceeding a specified amount. If, however, this jurisdiction is conferred on the Court of an Assistant Commissioner, it follows that, by reason of the provisions of sections 16 and 32 of the Provincial Small Cause Courts Act, 1887, that Court will have exclusive jurisdiction in suits which are cognizable by a Court of Small Causes. Now, in the Central Provinces, a large amount of petty litigation is disposed of by the Courts of the Tahsildar and Naib-tahsildar. The Courts of the Tahsildar have jurisdiction in suits of which the value does not exceed Rs. 300, and the Naib-tahsildar may be invested with power to try Small Cause Court cases of a value not exceeding Rs. 50. Consequently, if an Assistant Commissioner is invested with Small Cause Court powers within a local area, many of the cases disposed of by the Tahsildar and all the cases cognizable by the Naib-tahsildar within that area will have to be dealt with by the Assistant Commissioner. The result then of investing the Assistant Commissioner with the powers of a Court of Small Causes would be to remove a number of petty cases from the inferior Courts, to deprive the Naib-tahsildar of his jurisdiction, and at the same time to impose more work on the Assistant Commissioner than he could dispose of. It has not, therefore, been found practicable to carry out the intention of the Legislature and to confer upon Assistant Commissioners the powers of a Court of Small Causes. As the law stands, the Local Government must either refrain from investing them with those powers, or it must transfer to the superior and more expensive Courts a mass of petty litigation which is now satisfactorily disposed of by the inferior Courts. To meet this difficulty the Bill proposes to amend section 16 of the Central Provinces Civil Courts Act, so as to enable the Commissioner or Deputy Commissioner to distribute the business of the Civil Courts as he thinks fit notwithstanding the provisions of the Provincial Small Cause Courts Act regarding the exclusive jurisdiction of Courts of Small Causes and Courts invested with the powers of a Court of Small Causes. It will thus be possible to arrange so that all Small Cause Court suits exceeding in value a certain amount shall be disposed of by an Assistant Commissioner as a Small Cause Court, while all such suits of a lower value are left to be dealt with by the Tahsildar and Naib-tahsildar. It is

considered that a more extensive use of Small Cause Courts will be of advantage to the public. The civil business will be more promptly disposed of, and at the same time relief will be afforded to the Appellate Courts."

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITE also introduced the Bill.

The Hon'ble MR. CROSTHWAITE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Central Provinces Gazette in English and in such other languages as the Local Administration thinks fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 16th January, 1890

S. HARVEY JAMES,

Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 3rd January, 1890.

Government of India Central Printing Office.—No. 209 L. D.—6-1-90.—300.—A. E. &S.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Thursday, the 16th January, 1890.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C., C.S.I.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of Vizianagram.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Durga Churn Laha, C.I.E.

The Hon'ble Muhammad Ali Khan.

The Hon'ble R. J. Crosthwaite.

The Hon'ble Sir A. Wilson, Kt.

The Hon'ble F. M. Halliday.

The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.

NEW MEMBERS.

The Hon'ble MR. HALLIDAY and the Hon'ble RAO BAHÁDUR KRISHNAJI LAKSHMAN NULKAR took their seats as additional Members.

REVENUE RECOVERY BILL.

The Hon'ble MR. CROSTHWAITE moved that the Hon'ble Mr. Hutchins, the Hon'ble Mr. Halliday, the Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar and the Mover be added to the Select Committee on the Bill to make better provision for recovering certain public demands.

The Motion was put and agreed to.

[*Mr. Crosthwaite; Mr. Scoble; Mr. Hutchins.*] [16TH JANY., 1890.]

CENTRAL PROVINCES CIVIL COURTS ACT, 1885, AMENDMENT BILL.

The Hon'ble MR. CROSTHWAITE also moved that the Bill to amend the Central Provinces Civil Courts Act, 1885, be referred to a Select Committee consisting of the Hon'ble Mr. Scoble, the Hon'ble Mr. Hutchins, the Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar and the Mover, with instructions to report within one month.

The Motion was put and agreed to.

ACTS XVII OF 1864, X OF 1865, II OF 1874 AND V OF 1881 AMENDMENT BILL.

The Hon'ble MR. SCOBLE moved that the Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar be added to the Select Committee on the Bill to amend Acts XVII of 1864 (*Official Trustee*), X of 1865 (*Indian Succession*), II of 1874 (*Administrator General*) and V of 1881 (*Probate and Administration*).

The Motion was put and agreed to.

FOREST BILL.

The Hon'ble MR. HUTCHINS moved that the Hon'ble Maung Ôn and the Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar be added to the Select Committee on the Bill to amend the Indian Forest Act, 1878, the Burma Forest Act, 1881, and the Upper Burma Forest Regulation, 1887.

The Motion was put and agreed to.

PREVENTION OF CRUELTY TO ANIMALS BILL.

The Hon'ble MR. HUTCHINS also moved for leave to introduce a Bill for the Prevention of Cruelty to Animals. He said:—

"The printed Statement of Objects and Reasons which I will lay on the table along with this Bill is very concise, and as it will enable the Council to see at a glance the general purport of the proposed measure it may be convenient that I should commence what I have to say by reading it:

"'In different parts of British India there are more than twenty enactments in force relating to cruelty to animals, but the local extent of most of these enactments is very

limited, while the necessity imposed by others of proving cruelty to an animal, to have caused obstruction, inconvenience, annoyance, risk, danger or damage to the public renders it very difficult to maintain a prosecution.

"'The object of the present Bill is to provide an easily enforceable law which may be applied by any Local Government to any part of the territories under its administration, either in addition to, or to the exclusion of, any other enactment in force in such part for the suppression of cruelty to animals.'

"The very number of the enactments referred to shows that the Provincial Councils have given great attention to the prevention of cruelty to animals, and it is right that this should be cordially acknowledged. In Bengal there is a special Act (I of 1869) which also applies in Assam. The Madras Council has lately passed a Towns Nuisances Act, under which the provisions of section 53 and other sections of the Madras City Police Act connected with the same subject may be extended to towns and other areas beyond the limits of the presidency-town. The District Police Bill in Bombay contains somewhat similar provisions, and in the North-Western Provinces the Legislative Council has before it a Bill which repeats the provisions of the Bengal Act and seems intended to have general application. If these four provinces constituted the whole of British India, I should hardly have desired to press the matter further at present.

"But there are other important provinces which have no local Legislature, but depend for their laws on this Council. There are the Punjab, the Central Provinces and Burma, besides the minor Administrations in Ajmere, Coorg and Baluchistan. Apart from certain Imperial Acts relating to cruelty in cantonments or in connection with stage or hackney carriages, or with gambling, the only enactment of the kind in force in these provinces is section 34 of the Police Act (V of 1861), which runs as follows:—

"'Any person who, on any road or in any street or thoroughfare within the limits of any town to which this section shall be specially extended by the Local Government, commits any of the following offences to the obstruction, inconvenience, annoyance, risk, danger or damage of the residents and passengers, shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees, or to imprisonment not exceeding eight days; and it shall be lawful for any police-officer to take into custody, without a warrant, any person who within his view commits any of such offences.'

"And the second of such offences is this:—

"'Any person who wantonly or cruelly beats, abuses or tortures any animal.'

"It will be seen, first, that this section can only be extended to a town; secondly, that even within the limits of a town it cannot reach any act of cruelty, however barbarous, which is not committed on a road or in a street; thirdly, that it must have caused at least inconvenience to passers-by, and the tribunals are sometimes rather exacting with regard to the evidence of such inconvenience; and fourthly, that only actual beating, abuse or torture is made punishable. In all these respects the present law of the provinces in question is more or less unsatisfactory, and, as it can only be amended by the Supreme Legislature, I have thought it best to prepare a general law which can be adopted by any Local Government over such areas as it may from time to time consider expedient.

"I think what I have said will be enough to satisfy the Council that some measure of the kind is desirable. In these days fortunately there is no need to insist on the right—nay, the duty—of the Legislature to interfere for the protection of dumb animals, and the only difficulty which I feel, or which is likely to be felt by any Hon'ble Member here present, is whether cruelty to animals should be made a criminal offence in every case, or whether regard should be had to such considerations as the publicity of the place, the proximity of a Magistrate capable of disposing of the case, and the like.

"The English law on the subject is contained in 12 & 13 Vict., c. 92, and is of course perfectly general—any person who cruelly beats, and so forth, who keeps a place for baiting animals or causing them to fight, who so conveys an animal as to cause it needless suffering, shall forfeit and pay such and such penalties. And doubtless it is perfectly true that such brutality is equally deserving of reprobation and punishment, whether committed in public or in private, in a town or in a village, in the busy thoroughfares of a city or in a remote field in an agricultural district. But neither English law nor abstract morality is a safe index of what may properly be made penal in this country.

"No Provincial Legislature has yet ventured to pass a law of such general application as the English Statute. The habits of the people, the varying character of the agency by which the law will have to be enforced, the enormous size of the rural tracts, the paucity of competent tribunals—these and many other things have to be borne in mind, and therefore it is that most of the existing enactments can only be put in force in towns, while in all the Executive Government has retained in its own hands the power of prescribing the places to which alone they shall apply. In a matter of this kind it seems to me essential

that we should both proceed with caution and endeavour to carry the people with us. We shall have to consult Local Governments as to the local extent of the measure, and if we wish them to give it anything like general application we must see that its provisions are framed with due moderation

"Passing now to the details of the Bill, I think I shall be able to show that the bounds of moderation have not been transgressed. Sub-section (*2*) of section 1 provides that the Act shall extend to such local areas as the Local Government directs, while section 3 makes certain acts of cruelty punishable only if committed in a street or place of public resort, or within sight of any person in a street or such place. I have introduced these two limitations for the reasons which I have just indicated; but Local Governments will be specially consulted, first, as to whether it would not be safe, seeing that these acts are only punishable when done in public, to give the enactment immediate operation everywhere, or at all events in all towns; and, secondly, if this is not considered safe and if the local extent is to be regulated by the Local Governments' own orders, whether these particular acts of cruelty may not be declared penal wherever committed, like other classes of acts to which I shall presently refer. Meanwhile, however, I have preferred framing the Bill in this way because I expect that Local Governments will be much more chary about extending its operation if we give a right of entry into private houses, and because I anticipate far more good from the prevention of open cruelty over a wide area than from conferring power to prevent private as well as public cruelty within more restricted limits.

"The acts to which section 3 relates are as follows:—

"'(*a*) cruel and unnecessary beating, overdriving, overloading or otherwise ill-treating any animal;

"'(*b*) binding or carrying any animal in such a manner or position as to subject the animal to unnecessary pain or suffering;

"'(*c*) offering, exposing or having in possession, for sale any live animal which is suffering pain by reason of mutilation, starvation or other ill-treatment, or any dead animal which has been killed in an unnecessarily cruel manner.' *. *. *

"It will be noted that nearly all these are acts which from their very nature can hardly be committed otherwise than in public. Such at all events are overdriving, overloading, conveying animals in a painful position and offering or exposing for sale. As regards such acts it is no restriction at all to say that they

shall only be punishable if committed in a street or place of public resort. Practically, therefore, this condition will only control the general words 'beating and ill-treatment,' and I think it should be maintained for this purpose. As to all acts covered by this section the police are given power to arrest, but there will be no power to enter or search private houses.

"On the other hand, sections 4 and 5 relate to acts which may well be made punishable wherever committed. If sufficient cause can be shown I should have no objection to add other specific acts to this category; but at present only two are provided for, namely, the killing of an animal in an unnecessarily cruel manner, and the employment of an animal on work for which it is unfitted by disease, infirmity, wounds or sores.

"As to these acts the Bill authorizes the grant of a search-warrant upon information duly sworn before a Magistrate of the first class. We have recently heard of butchers flaying live goats in their own houses, and I venture to think that brutality of this description must be prevented at any cost. I am informed too that it is a common practice to cut out the tongues of turkeys and allow the birds to bleed slowly to death in order to whiten their flesh. Such acts will be covered by section 4. Section 5 is taken from the Bengal Act (I of 1869) to which I have already referred. So also is section 6, which provides a penalty for permitting diseased animals to go at large or to die in a street. Lastly, the concluding section limits the period within which prosecutions may be instituted under the Act to three months from the date of the commission of the offence.

"The opinions of all Local Governments as well as of all associations for the prevention of cruelty to animals will, of course, be duly considered in Select Committee; but, if I may assume that the Bill will be maintained on its present lines, I venture to anticipate that it will be put in force at once wherever the more limited local Acts have been applied, and that it will continue to be extended over ever-widening areas until it embraces at least all the populous parts of the country."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also introduced the Bill.

The Hon'ble MR. HUTCHINS also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the

local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 31st January, 1890.

S. HARVEY JAMES,

Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 17th January, 1890.

Government of India Central Printing Office.—No. 418 L. D.—17-1-90.—500.—A. McL.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 31st January, 1890.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C., C.S.I.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of Vizianagram.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Durga Churn Laha, C.I.E.

The Hon'ble Muhammad Ali Khan.

The Hon'ble R. J. Crosthwaite.

The Hon'ble Sir A. Wilson, Kt.

The Hon'ble F. M. Halliday.

The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.

REVENUE RECOVERY BILL.

The Hon'ble MR. CROSTHWAITE presented the Report of the Select Committee on the Bill to make better provision for recovering certain public demands. He said:—

"This Bill was introduced more than two years ago by the Hon'ble Mr. Quinton, and, as his remarks can scarcely now be within the recollection of the Council, I will, with Your Lordship's permission, describe briefly the scope of the measure. Its principal object is to remedy defects in the law regarding the realization of arrears of land-revenue. The various Land-revenue Acts which are now in force in the different Provinces do not provide for the realization in one Province of land-revenue which is payable in another Province. Consequently, when an arrear of land-revenue is due on account of land situate in one Province and the person from whom the arrear is due is in another Province

and has property there, there is no way of enforcing the demand against the person of the defaulter or against the property which he has in the other Province. It may be that the arrear could be easily realized by summoning the defaulter or attaching his moveable property in the other Province; but, as neither of these processes can be resorted to, the Collector is obliged to have recourse to the harsher and more troublesome processes against the land on which the arrear accrued. This defect in the law may place still greater difficulties in the way of realizing a tax or other sum which is recoverable as an arrear of land-revenue. In that case, by transferring himself and his property to another Province, the defaulter may be able successfully to evade payment.

"It appears also that in the land-revenue laws in force in some Provinces there is no provision enabling the Collector of one district to realize from a defaulter in his district revenue which is payable on account of land situate in another district of the same Province. There can be no reason why an arrear of land-revenue should not, like a judgment-debt, be recoverable beyond the limits of the Province or district in which it became payable. The Bill accordingly is intended to supply these defects in the law. It provides that the Collector of one district who wishes to realize land-revenue, or a sum recoverable as an arrear of land-revenue, payable to him from a defaulter who is or has property in another district may send to the Collector of that other district a certificate stating the name of the defaulter, the amount payable by him and the account on which it is due. On receiving the certificate the Collector of the other district may proceed to recover the amount as if it were an arrear of land-revenue which had accrued in his own district. This procedure is similar to that authorized by a law in force in the Province of Bengal, and to that by which a decree of one Civil Court can be transferred for execution to another Civil Court.

"A minor matter with which the Bill deals is the realization of sums which are recoverable as an arrear of land-revenue by a public officer other than a Collector or by a local authority. As the Hon'ble Member who introduced the Bill pointed out, it may happen that the public officer or local authority by whom the sum is recoverable is unacquainted with the land-revenue law and is not in a position to enforce its provisions. The Bill therefore enables the Collector at the request of the officer or local authority to recover the sum as if it were an arrear of land-revenue which had accrued in his own district and was payable to himself.

"I will, my Lord, notice on a future occasion the amendments which have been made in the Bill by the Select Committee."

[31ST JANUARY, 1890.] [*Mr. Scoble.*]

ACTS XVII OF 1864, X OF 1865, II OF 1874 AND V OF 1881 AMENDMENT BILL.

The Hon'ble MR. SCOBLE presented the Report of the Select Committee on the Bill to amend Acts XVII of 1864 (*Official Trustee*), X of 1865 (*Indian Succession*), II of 1874 (*Administrator General*) and V of 1881 (*Probate and Administration*). He said :—

"As this Bill was introduced by me at Simla, I take advantage of the presentation of the Report of the Select Committee to state briefly, for the information of the Council generally, the purposes which it is intended to accomplish.

"The first is to make certain administrative arrangements with regard to the offices of Official Trustee and Administrator General in Bengal. These will only come into effect upon the occurrence of vacancies, when the Governor General in Council will be empowered to divide the enormous territory now subject to the charge of those officers into Provinces, having Calcutta, Allahabad, Lahore and Rangoon for their respective centres, and to appoint a separate officer in whom the two offices may be combined for each Province. This proposal has met with practically unanimous approval, and I cannot do better than quote the opinion of Mr. Broughton, the present Administrator General of Bengal, so far as the division of his own office is concerned. 'Assuming that the rules now in force are effectually applied to the new condition of things,' he says, 'I see no reason why other Administrators General should not be established in convenient centres with a prospect of their ultimately becoming very useful. . . . . The actual administration of estates, the collection of the assets, and the ascertaining and disposing of claims, in the place where the deceased person last resided, is the more convenient; it certainly is so in the interests of the creditors, and they, in my experience, are very largely interested in the estates of Europeans, &c., dying in India, especially with the estates of persons dying at a distance from the Presidency-towns.' Mr. Broughton, however, fears that in the beginning, and probably for some time, the Administrators in the smaller provinces would not find their offices remunerative.

"This difficulty is to some extent met by the second proposal of the Bill, to which I have already adverted, and which carries out a recommendation made by the Finance Committee that the offices of Administrator General and Official Trustee should, where possible, be amalgamated. The High Court at Calcutta deprecates any such amalgamation, on the ground that though there is 'a certain surface similarity' between the duties discharged by the offices in ques-

tion, 'the objects in view are entirely different,' and that confusion, mistakes and expense would follow if a separate ministerial staff for each office were not maintained. 'No ordinary body of clerks and other subordinates,' they say, 'could be expected to understand and remember that the powers of their chief and their duties were totally different, according to the capacity in which he had the control of an estate.' In answer to this objection it seems sufficient to say that the two offices have already been combined for some years in Madras and Bombay, without any evil or inconvenient result; and that the combination is not compulsory, but permissive. Mr. Broughton says it would be quite impossible now to amalgamate the office of Administrator General with that of Official Trustee in Calcutta, inasmuch as the time of the latter officer is, he believes, fully occupied. If that is the case, the offices will remain separate in the future as in the past. The Bill imposes no necessity for their combination.

"The third proposal of the Bill is to add Upper Burma to the domain of the Administrator General of Bengal, and British Baluchistan to that of the Administrator General of Bombay. The original proposal was to place both districts under the former officer; but his Bombay colleague has given three good reasons why British Baluchistan would be more appropriately attached to the Bombay than the Bengal Presidency, and the Select Committee has altered the Bill accordingly.

"The next proposal was not in the Bill as originally drafted, but has been introduced in Select Committee, and relates to the remuneration of the Official Trustee. Two different modes are provided under the present law for fixing his commission. He is entitled to make his own terms in regard to all trusts non-existing at the time when he consents to act; but in regard to subsisting trusts he is limited to a rate of commission fixed by section 11 of Act XVII of 1864. This scale, says Mr. Miller, the Official Trustee of Bengal, is so low as to be non-remunerative save in trusts of large amount; and the consequence is that the object of the Legislature in constituting the office is defeated by the officer declining to act. Even if beneficiaries are desirous to pay an adequate remuneration to make it worth the while of the Official Trustee to undertake such trusts, the provisions of the law preclude him from accepting any such proposal; and the usefulness of the office is thus greatly impaired. To remedy this inconvenience, the Select Committee propose to empower the High Court, in making an order for the transfer of any subsisting trust to the Official Trustee, to allow a higher rate of remuneration than that fixed by the Act should the circumstances of the case render it proper to do so.

"Another new proposal in the Bill as amended relates to section 64 of the Administrator General's Act, which provides that when any person not belonging to certain excepted classes dies, leaving assets within the limits of the jurisdiction of a District Judge, the District Judge shall report the circumstance without delay to the Administrator General of the Presidency, and 'shall retain the property under his charge,' or appoint an officer to take and keep possession of it, until the Administrator General has obtained letters of administration, or some other person has obtained such letters or a certificate under the Act, 'when the property shall be delivered over to the person obtaining such letters or certificate, or, in the event of a will being discovered, to the person who may obtain probate of the will.' It is obvious that a strict construction of this section, which mainly affects Europeans, might work great hardship, especially where the deceased had left a widow or children. The Select Committee has therefore added a proviso to the section, enabling the District Judge to do such acts as may be done by any person who intermeddles with an estate without thereby making himself an executor of his own wrong; that is to say, he may pay the expenses of the funeral, and provide for the immediate necessities of the family and property of the deceased; and, in addition, he may pay servants' wages to a limited extent, and advance such funds as may be necessary for the purpose of obtaining probate or administration.

"Lastly, the Bill proposes to enable an executor or administrator in British India to remit to the proper representative of the deceased's estate in the country of his domicile any residue or surplus of the Indian estate for distribution among the persons entitled thereto outside British India. This will admittedly be a great convenience, especially in the case of small estates. My learned friend, Mr. Latham, the Advocate General of Bombay, proposed to make it obligatory to remit the balance if the executor or administrator of the domicile so required; but the Select Committee agree with the Bombay Government in thinking that 'the existing law affords a sufficient remedy in case of failure of duty on the part of the local administrator,' and that to give a discretionary power in such cases will be practically sufficient."

PREVENTION OF CRUELTY TO ANIMALS BILL.

The Hon'ble MR. HUTCHINS moved that the Bill for the Prevention of Cruelty to Animals be referred to a Select Committee consisting of the Hon'ble Mr. Scoble, the Hon'ble Muhammad Ali Khan, the Hon'ble Mr. Halliday and the Mover, with instructions to report within six weeks.

The Motion was put and agreed to.

FACTORIES ACT, 1881, AMENDMENT BILL.

The Hon'ble MR. SCOBLE moved for leave to introduce a Bill to amend the Indian Factories Act, 1881. He said:—

"When the Indian Factories Act was passed in 1881, its provisions were limited strictly to those points for which legislation had been shown to be necessary; and the present measure, in like manner, embodies only such amendments and additions as the experience of nine years has proved to be clearly desirable. Much attention has been given in the meantime both in India and in England to the working of the Act, and the condition of the operatives who are affected by it. In 1884 the Bombay Government appointed a Commission to carefully consider the subject in all its bearings, and that Commission presented an exhaustive report in the following year. In 1887 Mr. Jones, who had been Inspector of Factories at Bombay, prepared a special report on Indian factories at the request of Mr. Redgrave, the Chief Inspector of Factories in England, which was printed as an appendix to the general report of that officer for the year. Questions have been asked in the House of Commons as to the hours of labour of Indian operatives, and it has more than once been suggested that it would be expedient to extend the provisions of the English Factory Acts to this country. The Government of India on its part has been occupied in making enquiries of Local Governments and other authorities as to the particulars in which the existing law has been shown to be defective, and as to the restrictions on the employment of labour which could fairly be introduced with a due regard to the interests of the operatives themselves, and without unnecessary interference with the development of manufacturing industries in India.

"It may, I think, be at once admitted that the English Factory Acts are inapplicable, as regards many of their provisions, to the conditions of labour in Indian factories. Mr. Jones, who speaks from experience as an Inspector in both countries, states his opinion that 'the English Factory Acts could not with fairness be put in force in India, the condition of the country, climate and people being so different.' In a despatch to the Secretary of State of 5th March, 1889, which has been laid before Parliament, the Government of India wrote:—

'It is a well-attested fact that the employés in Indian factories reach a standard of comfort and content which is not attained by persons in their own rank of life who are engaged in pursuits of a different nature. Machinery moreover is, owing to the comparative absence of competition, driven in the factories in India at a pace so slow that it would not be tolerated in England, and it is estimated that in many of the mills in India about twice

as many operatives are employed as would be employed in mills of the same capacity in England. It follows that the work of the operative in an Indian factory is far more desultory and less exhausting than that of an operative working in England, and that provisions which are rendered necessary by the exacting nature of the labour in English mills are not demanded in the interest of the Indian operatives, who would indeed be prejudicially affected by them.'

"Holding this opinion, it has become the duty of the Government to consider, in the light of the great mass of evidence which has been collected and placed at their disposal, the various suggestions which have been made for the amendment of the Act; and the result of this consideration is contained in the Bill which I now ask leave to introduce. Our proposals are eight in number:—

(1) to extend the operation of the Act to factories in which not less than twenty persons are employed;

(2) to raise the minimum age at which children may be employed in any factory from seven to nine years;

(3) to limit the hours of employment for women to eleven hours a day;

(4) to secure to women, as well as to children, proper intervals for food and rest during the day, and not less than four days holiday in each month;

(5) to secure a proper supply of water for the use of operatives;

(6) to ensure proper ventilation and cleanliness in factories;

(7) to prevent overcrowding likely to be injurious to health;

(8) to give Local Governments greater power to obtain returns and make rules for the purpose of carrying out the objects of the Act.

"I will not now detain the Council by stating at length the grounds on which these proposals are supported. I shall have an opportunity of doing so, if necessary, at a later stage. They are, I venture to think, simple and moderate, and will, I hope, be accepted as sufficient by this Council, as well as by the industrial community generally."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also introduced the Bill.

The Hon'ble MR. SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 14th February, 1890.

S. HARVEY JAMES,

Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 31st January, 1890.

Government of India Central Printing Office.—No. 444 L. D.—31-1-90.—308.—C. H. L.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 14th February, 1890.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C., C.S.I.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of Vizianagram.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Durga Charn Laha, C.I.E.

The Hon'ble Maung Ôn, C.I.E., A.T.M.

The Hon'ble Muhammad Ali Khan.

The Hon'ble R. J. Crosthwaite.

The Hon'ble Sir A. Wilson, Kt.

The Hon'ble F. M. Halliday.

The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.

REVENUE RECOVERY BILL.

The Hon'ble MR. CROSTHWAITE moved that the Report of the Select Committee on the Bill to make better provision for recovering certain public demands be taken into consideration. He said:—

"The Bill has not been materially altered in Select Committee, and of the amendments made three only require explanation.

"It has been pointed out that some of the local land-revenue laws contain provisions for the recovery in one district of an arrear of land-revenue which has accrued in another district in the same Province. As the Bill is not in-

tended to interfere with these provisions but merely to supply defects in the law, section 7, clause (*a*), has been amended so as to make it clear that nothing in the Act is to affect the provisions of any other enactment for the time being in force for the recovery of land-revenue or of sums recoverable as arrears of land-revenue.

"The next amendment which I have to notice is also in section 7 of the Bill. The arrest of the defaulter is one of the processes by which an arrear of land-revenue can be recovered, but by section 61 of the Punjab Municipal Act, 1884, and by section 36 of the Central Provinces Municipal Act, 1889, it is provided that a person shall not be arrested in default of payment of certain taxes which are recoverable as an arrear of land-revenue. This exemption from arrest should not be withdrawn if the defaulter happens to be in a place to which the Act granting the exemption does not extend. We consider also that it is unnecessary to allow a defaulter to be arrested for the recovery in one Province of arrears of municipal taxes which have accrued in another Province. We have, therefore, added to section 7 of the Bill a clause to the effect that nothing in the Act is to be deemed to authorize the arrest of any person for the recovery of any tax payable to a municipal authority.

"The third important amendment is the addition of section 8, by which we have provided for the realization in British India of arrears of land-revenue payable in territories which, though situate beyond British India, are administered by the Governor General in Council. This section will, for instance, enable a Collector in the Berars, if the Act is applied to the Berars, to realize an arrear of land-revenue payable to him by a defaulter who is in the Central Provinces.

"The other amendments made in the Bill by the Select Committee do not call for remark, but misapprehension appears to exist in some quarters as to the meaning of section 3 of the Bill, and it will be as well to say a few words to remove this misapprehension. It has been thought that, on a certificate being received by a Collector in Bengal from a Collector in the North-Western Provinces, the former Collector can realize the arrear without following the procedure prescribed by the law in force in Bengal. I may say that I can see no grounds for apprehending that any such construction can be placed on the section. It says distinctly that the Collector shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land-revenue which had accrued in his own district. Now, a Collector cannot recover an arrear of land-revenue which has accrued in his own district except by means of the provisions of the land-revenue law in force in that district. Consequently,

the Bengal Collector, on receiving a certificate under section 3 from a Collector in the North-West, will have, in order to recover the arrear, to follow the procedure prescribed by the Bengal Act, VII of 1880. A notice will have to be issued to the defaulter, who will be able, as provided in that Act, to file a petition objecting to the demand. The certificate under section 3 of the Bill merely gives the Collector receiving it power to recover the amount stated therein. If the Collector has to take measures to enforce the payment of the amount, he must proceed in accordance with the law in force in his district."

The Hon'ble RÁJÁ DURGA CHARN LAHA said:—"From the explanations afforded by the Hon'ble Member in charge of the Bill it is quite clear that the chief object of the Bill is the transfer of certificates from one Province to another so as to provide for the speedy collection of arrears of revenue. There was, however, some little misapprehension in certain quarters as to the effect of the Bill. But sub-section (*3*) of section 3, and section 7, clause (*a*), go to show that it is not at all intended to interfere with the practice and procedure which obtain in the Province where the certificate is transferred, and that such certificate will be dealt with in accordance with the law in force in that Province. The Collector on receipt of the transferred certificate has nothing else to do but to proceed in the same way as if the claim had accrued in his own district. Such being the case, I have no objection to offer to the passing of the Bill."

The Hon'ble RAO BAHÁDUR KRISHNAJI LAKSHMAN NULKAR said:—"Before this Motion is put to the vote I wish to mention that among the suggestions which the Select Committee had before them was one to the effect that section 4, sub-section (*2*), should be so amended as to enable the defaulter to sue for refund the Collector making the demand for arrears in the Court of the place where the defaulter may have gone or where his property may be found. It appeared to us that such an amendment was calculated rather to defeat the object of this legislation by facilitating a contest against the demand in a Court not ordinarily competent to easily arrive at a just conclusion owing to differences in the fiscal laws of the two places. As the Bill now stands, the Collectors making the demand will be expected to satisfy themselves of the justice of the claim before signing the certificate under section 3, sub-section (*2*), and the Collector of the other district will be expected to give due weight to any just objection against the demand before actually enforcing the same, as he would do 'if it were an arrear of land-revenue which had accrued in his own district' under sub-section (*3*). For these reasons the amendment in question could not be adopted"

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

RAILWAYS BILL.

The Hon'ble MR. SCOBLE presented the Report of the Select Committee on the Bill to consolidate, amend and add to the law relating to Railways in India. He said:—

"As this is a measure of considerable importance, I propose, with Your Lordship's permission, not to take the discussion of the Bill until this day month, the 14th of March."

ACTS VI AND VII OF 1884 AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR presented the Report of the Select Committee on the Bill to amend Acts VI and VII of 1884 (*Inland Steam-vessels and Indian Steamships*). He said:—

"In introducing this Bill I explained that its object was to effect two amendments in the existing law. It authorised a Local Government to delegate to a competent person the power of granting a certificate of survey, whether under the Inland Steam-vessels Act or the Indian Steamships Act; and it also provided a penalty for the offence of carrying in an inland steam-vessel passengers in excess of the number specified in the certificate of survey as that which the vessel was fit to carry.

"These provisions have been retained by the Select Committee, which also thought it expedient to make a few other amendments of the law of a simple nature, and to which there is practically no opposition.

"Provision has been made under the Inland Steam-vessels Act for the grant of a certificate of service to persons who have served as masters, engineers or engine-drivers of steam-vessels before 1st April, 1890.

"This certificate of service will have the same effect as a certificate of competency granted under the Act after examination, and the object of the provision is to protect the interests of persons who have proved their competency by actual service in the past without compelling them now to undergo an examination.

"Authority is also given to Local Governments to make rules for the protection of passengers in inland steam-vessels, and to require a sufficient supply of drinking-water to be provided, and the prices of passenger-tickets to be printed or otherwise denoted on such tickets. In some cases a supply of fresh water need not be carried, as it could always be obtained alongside the vessels, and for certain voyages the prices of tickets vary in such manner as to prevent them from being denoted on the tickets; such questions can therefore be more correctly dealt with under rules to be made by the Local Governments concerned than by positive provisions in an Act of the Legislature.

"Doubts have been raised whether a fee can be levied for a second survey under the Act, when the master or owner of the vessel or ship is dissatisfied with the results of the first survey. The Select Committee has inserted such provisions in the Bill as will remove all doubt regarding the legality of levying the fee for a second survey, whether the second survey be made under the Inland Steam-vessels Act or the Indian Steamships Act."

ACTS XVII OF 1864, X OF 1865, II OF 1874 AND V OF 1881 AMENDMENT BILL.

The Hon'ble MR. SCOBLE moved that the Report of the Select Committee on the Bill to amend Acts XVII of 1864 (*Official Trustee*), X of 1865 (*Indian Succession*), II of 1874 (*Administrator General*) and V of 1881 (*Probate and Administration*) be taken into consideration. He said:—

"I so fully stated the objects of this Bill when I presented the Report of the Select Committee a fortnight ago that I need not now detain the Council by any lengthened exposition. The changes in the law proposed by the Bill are mainly administrative. Some will come into operation on the occurrence of vacancies in the offices of Administrator General and Official Trustee of Bengal: others will take effect at once. It is proposed, as the Council will remember, eventually to divide the Presidency of Bengal, which now practically includes the whole of British India except the Presidencies of Madras and Bombay, into Provinces having Calcutta, Allahabad, Lahore and Rangoon for their respective centres, and to appoint for each such Province an officer in whom the two offices of Administrator General and Official Trustee will, or may, be combined. It will rest with the Government of India to determine at the proper time the exact manner in which this re-distribution shall be carried out, and its object will be, in any new arrangement, to ensure that the services of

these officers shall be made available in the manner likely to be most convenient to the public, without any diminution of the security which attaches to the offices as at present constituted.

"The immediate changes proposed by the Bill are to place Upper Burma under the charge of the Administrator General of Bengal, who already includes Lower Burma in his domain; and to place British Baluchistan in the charge of the Administrator General of Bombay, who already exercises like functions in the adjoining Province of Sind. The Bill further proposes to give a High Court power to fix a higher remuneration for an Official Trustee in regard to existing trusts than the rate of commission fixed by Act XVII of 1864, which is found to be so low as to prevent the acceptance of such trusts in many cases; and to allow a District Judge to employ the property of a deceased person which has come into his hands in paying certain necessary expenses. Finally, the Bill affords a long-needed relief to Indian executors and administrators by enabling them to remit any balance in their hands to the legal representative of a deceased's estate in the country of his domicile, for distribution among the persons entitled thereto outside British India.

"I think the Council will agree with me that these are all objects of practical utility, which only need to be stated to commend themselves for adoption."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

FOREST BILL.

The Hon'ble MR. HUTCHINS presented the Report of the Select Committee on the Bill to amend the Indian Forest Act, 1878, the Burma Forest Act, 1881, and the Upper Burma Forest Regulation, 1887. He said:—

"When I introduced this Bill I explained at some length the nature and objects of the several provisions it contains. The Bill has not been materially altered in Committee, and I propose to reserve such further observations and explanations as may be required until I move that the Bill be taken into consideration by the Council."

[14TH FEBRUARY, 1890.] [*Mr. Crosthwaite; Mr. Scoble; Sir David Barbour.*]

CENTRAL PROVINCES CIVIL COURTS ACT, 1885, AMENDMENT BILL.

The Hon'ble MR. CROSTHWAITE presented the Report of the Select Committee on the Bill to amend the Central Provinces Civil Courts Act, 1885. He said:—

"This measure is, as I explained on a former occasion, intended to facilitate the disposal of the business of the Civil Courts in the Central Provinces by providing that the rule contained in sections 16 and 32 of the Provincial Small Cause Courts Act, 1887, as to the exclusive jurisdiction of Small Cause Courts, shall not prevent the distribution of business between the ordinary Civil Courts and Courts exercising Small Cause Court powers.

"No amendments have been made in the Bill by the Select Committee."

INDIAN FACTORIES ACT, 1881, AMENDMENT BILL.

The Hon'ble MR. SCOBLE moved that the Bill to amend the Indian Factories Act, 1881, be referred to a Select Committee consisting of the Hon'ble Mr. Hutchins, the Hon'ble Rájá Durga Charn Laha, the Hon'ble Sir Alexander Wilson, the Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar and the Mover.

The Motion was put and agreed to.

ACTS I OF 1859, VII OF 1880 AND V OF 1883 AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved for leave to introduce a Bill to amend Acts I of 1859 (*Merchant Seamen*), VII of 1880 and V of 1883 (*Indian Merchant Shipping*). He said:—

"The changes in the law which are proposed do not involve any question of principle, and are in fact merely such improvements in minor matters as experience of the working of the Acts to which I have referred shows to be necessary or expedient. A very brief explanation of the changes which it is proposed to make will, therefore, be sufficient.

"Under the law as it now stands, crews serving in a foreign-going ship on a running agreement must in some cases be discharged at a port in India other than that at which they have agreed to be discharged, although the

vessel is proceeding to the latter port and although such discharge is opposed to the wishes both of the master and the crew. It is proposed to make it lawful, with the sanction of the shipping-master, to renew the agreement for the voyage to the port originally contemplated as the port of discharge.

"If the shipping-master should require the master of the vessel to renew the agreement for the voyage to the port of discharge and the master of the vessel refuses to do so, the expense of subsistence of the crew and the cost of their passage to the port of discharge are made a charge against the ship.

"Provision is also made in the present Bill to indemnify the State against expenditure incurred in relieving lascars left abroad by foreign vessels and in returning them to India. This provision is not from a financial point of view of any great importance, but if an agreement has been made for the return of a lascar to India and the master of a vessel discharges such lascar at a foreign port, even with the lascar's consent, it is only reasonable that any cost which is thereby imposed on the State should be recoverable under the law.

"It is also proposed that all wreck found outside the local limits of the authority of a Receiver of Wrecks but brought within such limits shall be delivered to the Receiver. This is an amendment of the Indian Merchant Shipping Act, 1880, which is obviously necessary.

"The definition of the word 'coast' in the Indian Merchant Shipping Act, 1883, is also amended so as to make it include the coasts of creeks and tidal rivers, and provision is made for giving to a Local Government power to convene a Court of Investigation for inquiry into a casualty which has occurred within the jurisdiction of, or been reported to, another Local Government. Several failures of justice have occurred owing to the want of this provision, and it is convenient that it should be possible to hold the investigation at a place where the witnesses and parties to it may happen to be.

"It has been found to be expedient that the Government of Bombay should have power to delegate to the Resident at Aden authority to order an investigation into a shipping casualty in accordance with sections 7 and 8 of the Act of 1883, and the necessary provision is made in the present Bill.

"Authority is also given to Courts of Investigation under the Merchant Shipping Act of 1883 to cancel or suspend local certificates of competency or service. These Courts have authority to cancel or suspend Board of Trade and

Colonial certificates, and they should possess the same power in regard to local certificates."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also introduced the Bill.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Fort St. George Gazette, the Bombay Government Gazette, the Calcutta Gazette and the Burma Gazette in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

PREVENTION OF CRUELTY TO ANIMALS BILL.

The Hon'ble MR. HUTCHINS moved that the Hon'ble Rájá Durga Charn Laha be added to the Select Committee on the Bill for the Prevention of Cruelty to Animals.

The Motion was put and agreed to.

The Council adjourned to Friday, the 21st February, 1890.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 18th February, 1890.

Government of India Central Printing Office.—No. 485 L. D.—19-2-90.—308.—C. H. L.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 21st February, 1890.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding.*

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C., C.S.I.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Durga Charn Laha, C.I.E.

The Hon'ble G. H. P. Evans.

The Hon'ble Maung Ôn, C.I.E., A.T.M.

The Hon'ble Muhammad Ali Khan.

The Hon'ble R. J. Crosthwaite.

The Hon'ble Sir A. Wilson, Kt.

The Hon'ble F. M. Halliday.

The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.

CHARITABLE ENDOWMENTS BILL.

The Hon'ble MR. SCOBLE presented the Report of the Select Committee on the Bill to provide for the Vesting and Administration of Property held in trust for charitable purposes.

ACTS VI AND VII OF 1884 AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Report of the Select Committee on the Bill to amend Acts VI and VII of 1884 (*Inland Steam-vessels and Indian Steam-ships*) be taken into consideration. He said:—

"When presenting the report of the Select Committee I explained briefly the alterations which had been made in the Bill, and I stated that those alter-

ations were not of any great importance. I therefore need not take up the time of the Council by going through them again. But there is a proposal of some importance which, although mentioned in the report, was excluded from the Bill by the Select Committee; I refer to the proposal by the Lieutenant-Governor of Bengal to have three classes of certificates of competency, instead of two, for the management of inland steam-vessels. The original proposal was made by the Lieutenant-Governor of Bengal in May last, and as it did not appear at that time that the parties interested generally had been consulted, and as there was some *primâ facie* objection to the proposal, it was returned to the Government of Bengal. The Government of Bengal took steps to consult some of the persons chiefly interested in the matter, with the result that the original proposal was dropped and another proposal substituted. Unfortunately the latter proposal did not come before the Select Committee until about the 10th or 11th of the present month; and there were then two courses open to the Committee—either to report the Bill as it stood, leaving this proposal of the Bengal Government to be dealt with hereafter, if necessary, or to postpone their report and to consult Local Governments, especially the Government of Burma, and persons interested in the inland trade of Burma. The Select Committee thought that to postpone the consideration of the Bill might risk its passing this session; they thought it better to make a report at once, and to leave the important questions raised by the Government of Bengal to be dealt with subsequently if it should be found necessary to legislate with regard to it. The result is that the provisions which the Lieutenant-Governor was anxious to see introduced into the law are not contained in the present Bill, and I am afraid that it is impossible, and unfair to the parties interested, to put in any provisions at this moment to meet his wishes. However, I may say that the papers connected with those proposals shall, without any unnecessary delay, be circulated to the persons interested and to Local Governments, and when the Government of India has got full information on the subject it will decide whether or not it is expedient to undertake further legislation. I cannot say that, if the Government of India decide to legislate at all, it will legislate exactly in the direction indicated by the Lieutenant-Governor of Bengal. But I may say that the whole case will be considered afresh, and that there will be no unnecessary delay in coming to a final decision."

His Honour THE LIEUTENANT-GOVERNOR said:—"After what has just fallen from my hon'ble friend Sir David Barbour, it does not seem expedient that I should take up the time of the Council by going fully into the case on which my amendments are based, nor that I should ask the Council to consider

my amendments as they stand. The question is really a technical one and also a very difficult one, and my reason for venturing to put these amendments on the paper and to break into the somewhat monotonous harmony of our weekly meetings by raising a discussion is that the Executive Government is told by the law to do things which I find as the law stands it is almost impossible for the Executive Government to do. I need not explain further than that the objects of my amendments are to divide what are now second class steam-vessels into two classes, for the purpose of giving certificates of competency to masters and engineers ; the difficulty being this, that if you put your qualifications as they ought to be for the higher class of steamers, you disable yourselves from giving certificates to all masters and engineers of the lower class of steam-launches and small steamers ; and it was to meet this that I put these amendments on paper. Since these amendments were put on the paper I learnt from my hon'ble friend the Chairman of the Port Commissioners that the question has been further considered by some of the owners of steam-vessels, and that they have raised what is really an entirely new point. They have strongly expressed the opinion that the whole class of steam-launches and minor steam-vessels plying in the port should not come under the system of certificates and survey at all. That may be right or it may be wrong ; but all I can say is that the present law imposes on the Local Government the duty of surveying these vessels and issuing certificates to them, so that they should not run without licenses. If the Legislature thinks that these classes of steam-vessels ought to be exempted, let them be exempted ; but the executive officers have no power under the law as it now stands to exempt them or to exempt any class of them. And my object ultimately is to have the law put in such a state that, whichever course is taken, the carrying out of the duties imposed upon the Executive Government will not be impossible. After what my hon'ble friend has said that this question will be fully considered later on and more thoroughly threshed out, I see no necessity to press my amendments, and I am perfectly free to confess that the information before the Legislature at the present moment is not sufficient to enable us to consider the matter Therefore, with Your Excellency's permission, I beg leave to withdraw them."

The Hon'ble MR. EVANS said :—"I would venture to ask one question. We have heard from His Honour the Lieutenant-Governor that the Bill, as it at present stands, imposes upon the Executive Government the performance of an impossible duty. I do not know whether it is really so, but if it be so it seems to me to suggest the postponement of the passing of the Bill."

The Hon'ble SIR DAVID BARBOUR said:—"Perhaps I had better deal with the question put by the Hon'ble Mr. Evans in replying to what has fallen from His Honour the Lieutenant-Governor. I do not think that the Bill imposes an impossible duty on the Local Government, because the Bill as it now stands imposes no duty in respect to the matter at issue on the Local Government which was not imposed upon it by the Act of 1884—an Act which I think was passed at a time when Sir Steuart Bayley was a member of this Council, though of course that fact does not bind him to an approval of the law as it at present stands. It is a singular fact that, although the Act passed in 1884 made it necessary to issue certificates of competency, up to the present time those provisions of the law have not been acted upon in Bengal." [His Honour THE LIEUTENANT-GOVERNOR:—"Informal certificates of competency have been issued by the Port Commissioners with which they are allowed to work."] "The certificates to which I refer are certificates issued in accordance with the provisions of the Act, and, although such certificates have not been issued, there have been really no serious accidents, and the whole evidence shows that the larger vessels commanded by native commanders have been managed with great ability and success. It is quite true that the Government of Bengal brings forward a difficulty which is said to arise under the Act of 1884, and which is not met by the present Bill, namely, that the second class certificates cover a large range of vessels, some of them large and some of them small. Consequently, if the certificate is just sufficient, and not more than sufficient, as a guarantee for the proper management of small steam-launches, then it is not a sufficient guarantee for the safety of larger vessels. But this difficulty has not been raised by other Local Governments, and I do not think it is correct to say that the present Bill imposes on the Government of Bengal an impossibility. There is inconvenience under the existing law according to the view of the Government of Bengal, but I do not think that there is any serious danger."

The Motion was put and agreed to.

His Honour THE LIEUTENANT-GOVERNOR asked for leave to withdraw the following amendments, which stood in his name:—

(*1*) That in the proposed section 25A of Act VI of 1884, inserted by section 9 of the Bill as amended, in line 8, the words "first-class or second-class" be omitted.

(*2*) That for sub-section (*2*) of the same section the following be substituted, namely:—

"(*2*) Every certificate of service so granted shall state—

(*a*) in the case of a master, the limit of gross tonnage within which he is to be deemed competent to command an inland steam-vessel; and

(*b*) in the case of an engineer or engine-driver, the limit of nominal horse-power within which he is to be deemed competent to take charge of the engines of an inland steam-vessel."

(*3*) That the following be added as sub-section (*3*) to the same section, namely :—

"(*3*) A certificate of service so granted shall, within the limit of gross tonnage or nominal horse-power specified thereon in each case, have the same effect as a certificate of competency granted under this Act after examination."

(*4*) That the following be inserted as section 11 of the Bill, and the numbering of section 11 and following sections be altered accordingly :—

Substitution of new section for section 28, Act VI, 1884.

"11. For section 28 of the said Act the following shall be substituted, namely :—

Nature of certificates necessary in case of different steam-vessels.

'28. (*1*) An inland steam-vessel shall not proceed on any voyage unless she has as her master a person possessing an appropriate certificate of service granted under this Act, or—

(*a*) if she is of the gross measurement of 350 tons or upwards, a person possessing a first-class master's certificate granted under this Act, or a master's certificate granted under Act I of 1859 (*for the amendment of the law relating to Merchant Seamen*), or the Merchant Shipping Acts, 1854 to 1883, or to which the provisions of any such Act have been made applicable under the Merchant Shipping (Colonial) Act, 1869,

(*b*) if her gross measurement is less than 350 tons and not less than 100 tons, a person possessing a second-class master's certificate granted under this Act, or a certificate of the higher grade of the nature referred to in clause (*a*) ;

(*c*) if her gross measurement is less than 100 tons, a person possessing a third-class master's certificate granted under this Act, or a certificate of one of the higher grades referred to in clauses (*a*) and (*b*).

(*2*) An inland steam-vessel shall not proceed on any voyage unless she has as her engineer a person possessing an appropriate certificate of service granted under this Act, or—

(*a*) if she has engines of 80 nominal horse-power or upwards, a person possessing an engineer's certificate granted under this Act, or the Indian Steam-ships Act, 1884, or the Merchant Shipping Acts, 1854 to 1883, or to which the provisions of any such Act have been made applicable under the Merchant Shipping (Colonial) Act, 1869,

(*b*) if she has engines of less than 80 nominal horse-power and not less than 30 nominal horse-power, a person possessing a first-class engine-driver's certificate granted under this Act or the Indian Steam-ships Act, 1884, or a certificate of the higher grade of the nature referred to in clause (*a*);

(*c*) if she has engines of less than 30 nominal horse-power, a person possessing a second-class engine-driver's certificate granted under this Act, or a certificate of one of the higher grades referred to in clauses (*a*) and (*b*).

Provided that a steam-vessel, whose gross measurement is less than 350 tons and not less than 100 tons, and whose engines are of less than 80 nominal horse-power and not less than 30 nominal horse-power, shall be deemed to have complied with the requirements of this section if she has as her master and engineer a person possessing both a second-class master's certificate and a first-class engineer-driver's certificate granted under this Act, or in either case a certificate of the higher grade referred to in sub-section (*1*), clause (*a*), and sub-section (*2*), clause (*c*), respectively;

Provided also that a steam-vessel whose gross measurement is less than 100 tons, and whose engines are of less than 30 nominal horse-power, shall be deemed to have complied with the requirements of this section if she has as her master and engineer a person possessing both a third-class master's certificate and a second-class engine-driver's certificate granted under this Act, or in either case a certificate of one of the higher grades referred to in sub-section (*1*), clauses (*a*) and (*b*), and sub-section (*2*), clauses (*a*) and (*b*), respectively.'"

Leave was granted.

The Hon'ble SIR DAVID BARBOUR then moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

CENTRAL PROVINCES CIVIL COURTS ACT, 1885, AMENDMENT BILL.

The Hon'ble MR. CROSTHWAITE moved that the Report of the Select Committee on the Bill to amend the Central Provinces Civil Courts Act, 1885, be taken into consideration. He said:—

"I do not think it necessary to trouble the Council with any further remarks on this Bill. I explained its objects on a former occasion, and the Committee have made no amendments."

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITE also moved that the Bill be passed.

The Motion was put and agreed to.

ACTS I OF 1859, VII OF 1880 AND V OF 1883 AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Bill to amend Acts I of 1859 (*Merchant Seamen*), VII of 1880 and V of 1883 (*Indian Merchant Shipping*) be referred to a Select Committee consisting of the Hon'ble Mr. Scoble, the Hon'ble Mr. Hutchins, the Hon'ble Sir Alexander Wilson, the Hon'ble Mr. Halliday and the Mover, with instructions to report within one month.

The Motion was put and agreed to.

The Council adjourned to Friday, the 28th February, 1890.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 26th February, 1890.

Government of India Central Printing Office.—No. 527 L. D.—27-2-90.—308.—Jos. des.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 28th February, 1890.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.
The Hon'ble A. R. Scoble, Q.C., C.S.I.
The Hon'ble Sir C. A Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Syud Ameer Hossein, C.I.E.
The Hon'ble Rájá Durga Charn Laha, C.I.E.
The Hon'ble Maung Ôn, C.I.E., A.T.M.
The Hon'ble Muhammad Ali Khan.
The Hon'ble R. J. Crosthwaite.
The Hon'ble Sir A. Wilson, Kt.
The Hon'ble F. M. Halliday.
The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.

FOREST BILL.

The Hon'ble MR. HUTCHINS moved that the Report of the Select Committee on the Bill to amend the Indian Forest Act, 1878, the Burma Forest Act, 1881, and tne Upper Burma Forest Regulation, 1887, be taken into consideration. He said:—

"When I introduced this Bill last September I explained at considerable length the nature of the amendments which I proposed to make in the Indian Forest Act and the reasons which rendered them necessary. I am glad to say that no important objections have been made to my proposals, and, that being so, I think I need not trouble the Council with any further general observations, but may proceed at once to explain the several amendments seriatim.

"The definition of 'tree' has been expanded so as to make it clear that it includes palms as well as canes. To the lay and untrained intelligence the possibility that a palm-tree should not be a tree at all would not readily occur, but, some exceptionally subtle authority having suggested the doubt, the Committee thought it better to remove it once for all.

"It was originally proposed to amplify the definition of 'timber' so as to include charcoal, but this will now be separately provided for. The amended definition corresponds word for word with that which this Council adopted in the Burma Forest Act of 1881. The only difference between it and the existing definition is that we have struck out the words 'for cart-wheels, mortars, canoes,' as savouring of needless particularity: all are included in the general term 'for any purpose'.

"The most important amendment occurs in the definition of 'forest-produce.' A difficulty has arisen from timber having been classed as a species of forest-produce only when it is found in or can be shown to have been brought from a forest. As defined by itself timber includes all wood, but when it is coupled with other forest-produce a doubt arises whether it is not to be restricted to wood which can be proved to have been brought from a forest: it is generally impossible to prove this regarding wood which is being conveyed in a place outside a forest. And the word 'forest' is itself indefinite and I fear incapable of definition. Some very eminent authorities consider that nothing should be deemed to be a forest which has not been so constituted under the Act. This, however, would exclude all private forests and many other very extensive tracts which no one seeing them would hesitate to describe as forests—to which, in fact, no other description would be applicable. But, if we cannot define forests and must therefore be content to leave this point in some uncertainty, we can get over the practical difficulty in a very simple way, and that is by classifying as forest-produce all timber and certain other specific articles which are very rarely gathered elsewhere than in a forest, and over which it is essential in the interests of forest-administration and of the public to exercise control. As I explained when I introduced the Bill, this will in no way enlarge the class of offences committed in respect of forests constituted under the Act. Chapters II to VI will be absolutely unaffected by the proposed alteration. Its only effect will be to enable Government under Chapter VII to levy a duty on these special products, and under Chapter VIII to control their transport, without being under the necessity of showing in every instance that the particular log or consignment was produced in the indefinite something known as a forest.

"So far as Chapter VII is concerned this is the law already as regards timber, which is there used by itself and in its wider sense; and when I introduced this Bill I advanced what seemed to me rather strong reasons for holding that the Legislature had never intended to use the term in a different sense in Chapter VIII. If this was the intention, there was no occasion to specify timber at all: in its narrower sense it would be included in the general term 'forest-produce'; but not only is timber specially mentioned but the word 'all' is prefixed to it—'all timber and other forest-produce.' Again, timber being clearly used in the wide sense in Chapters VII and IX, it is *primâ facie* improbable that it would be employed in a different sense in the intermediate Chapter. I also referred to the debates in this Council and to the manner in which the Chapter had been understood and practically worked without any objection in most of the Provinces. It is only in Bombay that the Government has found itself constrained to adopt the narrower interpretation of the term, and there it was speedily discovered that such a construction rendered all attempt to control the transit of timber futile and ineffectual. In the Select Committee we have had the advantage of the assistance of the Hon'ble Mr. Nulkar, who was a member of the Bombay Forest Commission, and he entirely confirms the view that the prevention of smuggling is impossible, and that this most important Chapter must remain a dead letter in Bombay, unless the meaning of the Legislature is made clear by some such amendment as that which I propose. I therefore maintain, as I maintained when I introduced the Bill, that the inclusion of all timber in the definition of forest-produce will merely carry out what has all along been the intention, while it will place beyond controversy the practice which exists in every Province but Bombay and without which effectual control is impracticable.

"The original draft Bill put all trees and other produce of trees on the same footing as timber, but I do not now ask the Council to go so far as that. The first clause of the definition has now been cut down so as to include only a few important products, the transport of which requires to be regulated for the same reasons as timber: in the absence of such control they can be passed off as the produce of a private holding with hardly any risk of detection. I need hardly say that the Government does not wish to lay hands on any private produce. Under Chapter VII it can only levy a duty on produce to which it *has a right* or which has been imported from foreign territory, while by Chapter VIII it is merely empowered to regulate transport. The only way in which private produce will be affected will be that, in localities where the transport of particular kinds of produce needs to be regulated in order to prevent smuggling, private owners will be required to take out passes showing that the

produce mentioned in the pass comes from a private holding or has been purchased from a proper Forest-officer. Without some such simple procedure private owners will be constantly harassed on the mere supposition that the produce has been smuggled from a Government forest, and I therefore repeat what I stated at the introduction of the Bill, that the amendment will be as much for their advantage as for that of forest-administration.

"Sections 3 and 5 of the Bill require no explanation. Sections 4 and 6 relate to what is called *shifting* cultivation, by which we mean the practice of making a clearing, generally by fire, in forest-land, cultivating it for a year or two, and then shifting to another spot and repeating the same process. It is obvious that such a practice, unless very strictly confined, must be absolutely incompatible with forest-conservation. Those who practise it are mere squatters, and their cultivation of one clearing cannot confer a right to make another at will. Local Governments, however, deal very liberally with the tribes which have been accustomed to the practice, and all that is necessary is that it shall not be recognized as a right, but simply as a privilege to be exercised within such limits and under such regulations as may be prescribed. According to section 6, which has been very carefully considered by the Select Committee, when any claim of this nature is made before a Forest-settlement-officer he is to report it, as well as any local order affecting it, to the Local Government with his opinion whether it may be permitted or should be prohibited. If it is found that it can be permitted to any extent, he is to arrange for its exercise either by excluding a sufficient area from the proposed forest-reserve, or by setting apart a portion thereof in which it may be exercised subject to suitable conditions. In all cases it will be deemed not a right but a privilege, liable to restriction, and even to abolition on proper terms, at the pleasure of Government.

"Section 7 is new but the alteration is not of a substantial nature. Under section 25 (*b*) of the Act as it now stands, 'whoever sets fire to a reserved forest or kindles any fire in such manner as to endanger the same' is liable to punishment. It is proposed to amplify this provision by substituting 'whoever sets fire to a reserved forest, or, in contravention of any rules made by the Local Government, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest". These are almost the exact words of the corresponding section passed by this Council for Burma. It is desirable, on the one hand, to allow fires not inconsistent with local rules, and on the other it is essential that no fire should be left burning and unguarded.

"Section 8 merely carries out what I have before explained in connection with the definition of 'forest-produce'. By sub-section (*4*) we make it clear that the rules regarding transport need not be general, but should only be applied to such classes of timber or produce and in such limited areas as may be really essential. The enforcement of rules causes considerable trouble and expense, and that in itself is an additional security that their application will be restricted as much as possible.

"Sections 9, 10, 11 and 12 need no explanation beyond what is contained in the Committee's report.

"Section 13 relates to the compounding of forest-offences and has been entirely re-cast by the Select Committee. The Legislature has repeatedly recognized the principle that petty offenders against forest laws and rules should be allowed the option of making reasonable amends in money, and so escaping the very serious trouble and annoyance of a formal prosecution. It is not, therefore, necessary for me now to defend the principle of the section, but I have merely to show that we have provided sufficient safeguards against its abuse. One of these is the provision that the amends or compensation shall in no case exceed fifty rupees; the other is that the power to accept a composition shall only be exercised by officers specially authorized in that behalf, and that no officer shall be so authorized who is not at least a Ranger on one hundred rupees a month. Only a few of the senior Rangers draw so high pay, and if the power is given to them at all it must be conferred on them by name and therefore after consideration of their individual fitness. It is only to Subdivisional Officers or officers of control that it can be given as a class. Moreover, the Act will in no way interfere with any executive orders which Local Governments may see fit to make in further limitation of the sum which may be demanded or accepted. Thus, for example, the original Bill provided that such sum should not exceed ten times the damage done or the due sought to be evaded. This, as I stated, was founded on an order of my hon'ble friend the Lieutenant-Governor of the North-Western Provinces, and it may still be preserved by him, or varied as he thinks fit, subject to the statutory maximum of fifty rupees. If a larger sum than fifty rupees is fairly recoverable, it is right that the case should go before a Magistrate, for the procedure is only intended to apply to very petty offences.

"Section 14 is founded on section 25 of the Opium Act, I of 1878, and its object is to maintain a control over the operations of contractors and others who may be permitted to extract forest-produce. Such a man is always bound by certain express conditions, as that he will not cut trees which have not

attained a certain girth; but his men often do this for his advantage and probably with his connivance, while, if the breach of the conditions is detected, he pleads ignorance. The servants get access to the forest under cover of his license, and it seems reasonable that the employer, who benefits by an act which he has covenanted not to permit, should be made responsible. The simplest way to effect this is to bind him down by a penalty, and the section provides that, in the event of a breach, the amount of the penalty may be levied as an arrear of land-revenue.

"The remaining sections of the Bill merely provide for identical amendments in the Burma Forest Act, 1881. It is unnecessary that I should go through them in detail, as they are founded on precisely the same considerations which I have already submitted to Your Excellency and Hon'ble Members."

The Hon'ble RAO BAHÁDUR KRISHNAJI LAKSHMAN NULKAR said:—

"I wish to speak with reference to two provisions of this Bill, as regards their general as well as special applicability to certain localities.

"The provision to give power to Local Governments to extend their control over the transit of private forest-produce is of some importance. While such power is necessary for the effective protection against smuggling of Government forest-produce, it has to be remembered that it is a power which is peculiarly liable to be abused by departmental subordinates; and Local Governments will have to take special care, in framing their subsidiary rules under section 41 of the Act as now amended by section 8 of the Bill, to strictly confine their operation to forest-produce in which there is a considerable trade and with which private produce is likely to come into real competition and facilitate smuggling in the absence of the control.

"One of the applicants for this amendment of the Forest Act was the Government of Bombay, where, in addition to the general control over the transport, it will have a peculiar application. In Tanna and Kolaba, and perhaps in other parts, the Local Government will have, by the free and willing consent of the people, to prohibit, with certain exceptions, the export of private timber, as a means of helping the re-clothing of private lands with forest growths, to enable the cultivators to obtain supplies of timber, branches, foliage, &c., such as are annually required for agricultural purposes, and thereby diminish to a minimum the drain on public forests for

local supplies. Perhaps it may not be out of place if I allude briefly to the history of this point. The energetic and comprehensive character of the introduction into Bombay of the provisions of Chapters II and IV of the Forest Act of 1878 deprived the villagers, with one stroke of the pen, of the use of all lands just outside the limits of their fields, the notification issued under those Chapters having, in numerous instances, claimed as Government forests, without inquiry, even such lands as village-commons, grazing-grounds, and sometimes portions of village-sites. This was perhaps partly due to oversight, a result of the precipitate nature of the action taken. It produced widespread distress and discontent which might have led to serious results, had not District-officers partly delayed action on the notification. The next five years were occupied in a process of formal disforestation, by counter notifications, of tracts erroneously claimed as Government forests; but the resultant irritation could not be allayed, and vested rights and privileges at least partly restored, until, in 1885, a Commission was appointed to make inquiries and report on some of the specific grievances in certain parts of the Presidency. These had reference chiefly to local supplies and village privileges in adjacent forests which had been recognised from time immemorial, and which were more or less expressly or tacitly acknowledged at previous revenue survey settlements, but which, in the forest settlements ordered under the Act, suddenly ceased to be a factor to be counted with and recognised. The Forest Commission found that, while the villagers had these legitimate grievances to be redressed, the people in certain parts, exposed to the temptation of large markets close by, were by no means free from blame for having denuded their own extra assignments of land of all forest growth for present profit, and for having got into the objectionable habit of falling back almost entirely upon the public forests for supplies necessary for their own agricultural and domestic wants. The Commission came to the conclusion that the only practical solution of the difficulty was to enforce the legitimate use by the villagers of their extra lands for the growth of their own private supplies, and to confine the allowance from neighbouring forests to actual deficit, which was expected to become a minimum diminishing from time to time as the scheme recommended had time to work out the solution. The recommendation added, as an absolutely necessary condition, that Government should begin by completely severing its forest connection with private lands by either selling out to the occupants all teak and other royalty trees standing thereon and now claimed by Government, or by acquiring the land itself as Government forest under the Land Acquisition Law, thereby removing all cause of the constant friction between the Forest Department and the people, and enabling the latter to grow and supply themselves ultimately with nearly all the forest-produce they require for their

agricultural operations from their own lands. The villagers examined before the Commission were unanimous in their admission of the justice of such a prohibition against export of their private forest-produce, so long as they continued to require help from Government forests.

"To judge from the orders passed by the Government of Bombay on the report of the Forest Commission, that Government awaits the passing of this Bill to be able to give complete effect to the scheme of a fair and final adjustment of the conflicting claims and interests I have just explained; and we may trust that now no further delay may occur in carrying out that intention, and the risk of an interruption of the present forest policy with respect to local supplies may be avoided. I may be allowed to assure the Council that I do not unnecessarily allude so prominently to this precaution to place beyond the possibility of interruption the policy of sympathy and consideration in respect to agricultural needs of the people. Five years ago the fact of the appointment of the Forest Commission led to a tacit cessation of some of the most harassing and irritating forms of departmental interference with the people's forest rights and privileges; and the apparent peace so restored is due to the hopefulness of the people that the fuller and more effective measure of justice recommended by the Commission is only delayed till the passing of the Bill before us. If after this a further delay occurs, the impending change in the Local Government may result in a further inheritance by its successors of difficulties harassing to all parties concerned, just as they were left to be inherited by it five years ago, and by its own predecessors five years before that time, through the now admitted errors committed at the first introduction of the Forest Act of 1878.

"The other point to which I wish to allude is section 13, sub-section (*3*), of the Bill, where Local Governments are permitted to invest Forest-officers down to Rangers drawing a salary of not less than one hundred rupees per month with power to compound certain forest-offences by accepting up to fifty rupees as compensation. In the Select Committee I expressed my doubts as to the propriety of permitting to Rangers the exercise of this power which presented peculiar facilities for abuse; but, from what I learned from Hon'ble Members there, it appeared that in certain localities, owing to the paucity of higher officers at hand, it was sometimes necessary for administrative convenience, and even in the interests of the accused, to invest selected officers of the lower grade with the power. Speaking for Bombay, from some experience in certain districts, I may say that, though there such power has been exercised by officers of higher grades, it was not always used in a manner to command popular confidence.

We may, however, hope that, under the discretion allowed to Local Governments, sufficient care will be taken in selecting Forest-officers for the exercise of the power in question so as to secure the confidence of the public."

The Hon'ble MUHAMMAD ALI KHAN said:—

"Being a member of the Select Committee to whom the Bill was referred I would like to make some observations. As already explained by the Hon'ble Member in charge of the Bill, this Bill has passed through very few alterations in the Select Committee. Besides some verbal alteration, the Bill has been revised in two important matters.

"First, the Bill as drafted proposed to give the Forest-settlement-officer the power of settling the claims relating to the practice of shifting cultivation; but the revised Bill places the matter under the control of the Local Government.

"Secondly, the draft Bill provided that any Forest-officer may be authorised by the Local Government to compound certain forest-offences and limited the maximum sum to be accepted by way of compensation to ten times the value of the forest-produce which has been damaged or ten times the amount of money of which the payment is evaded. But the revised Bill limits the class of Forest-officers who may be thus authorised, and provides that the compensation in no case shall exceed the sum of fifty rupees.

"I think the Bill as amended is unobjectionable, and will be very useful if passed into law."

The Hon'ble MR. HUTCHINS said:—

"There is just one remark which I should like to make with reference to what has fallen from the Hon'ble Member opposite. I quite agree that the Local Governments should take special care not to interfere even with the transport of any produce unless in the particular locality there is a considerable trade in the article and a real danger of smuggling. But I do not contemplate anything like an absolute prohibition of the export of private timber. What section 41 says is that Government 'may prohibit the import, export or moving of such timber or other produce *without a pass*.' I understand, however, that the people of Tanna and Kolaba acquiesce in the necessity for such prohibition, and no doubt an arrangement of that nature may be made with their consent. Government could not refuse to issue passes on reasonable terms, but of course

private owners can abstain from asking for passes. I think it right to mention this, although the amendments made by the Bill on the table will not touch the law in this respect. Whatever the law was, just so it will remain.

"As to the other point to which the Hon'ble Member referred, I may mention that Local Governments may by executive order place different limits on the powers of Rangers and of Subdivisional Officers to accept composition. My reasons for not wishing to exclude Rangers altogether were just those which the Hon'ble Mr. Nulkar has described."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also moved that the following amendments be made in section 2, sub-section (*3*), and in section 15, sub-section (*2*), of the Bill as amended, namely:—

(i) in clause (*a*) of both sections, omit the words "trees and", and after the word "catechu" insert the words "wood-oil, resin, natural varnish,";

(ii) in clause (*b*), sub-clause (*i*), of both sections, for the words "wood-oil, gum, resin, varnish," substitute the words "trees and".

He said:—

"I think I have made it clear to the Council that there are some specific kinds of forest-produce which require to be controlled in transit by a system of passes. All these should be included in clause (*a*) of the definition, for otherwise it will be incumbent on the Government to show that the particular consignment comes from a forest in order to make it subject to regulation. Accordingly, as revised by the Select Committee, clause (*a*) enumerates timber, charcoal, caoutchouc, catechu, bark, lac, mahua flowers and myrabolams. I had not then any professional adviser with me, and I thought this catalogue would be sufficient. But I now learn that in some parts of the country, and particularly in Burma, Oudh, Assam and Orissa, the transport of wood-oil, resin or natural varnish requires to be similarly controlled. These are all collected in large quantities from the Government forests, but outside those forests there are scattered trees which yield the same products, and smuggling will be an easy matter if the necessary provision is not made to enable Government to make rules to prevent it. There is in all these cases both a considerable trade and a real danger of smuggling.

[28TH FEB., 1890.] [*Mr. Hutchins; Sir David Barbour.*]

"On the other hand, trees may be relegated to the other class of produce which we do not require to deal with unless they are found in a forest, and gum need not be specially mentioned at all."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

ACT XXV OF 1867 AMENDMENT BILL.

The Hon'ble MR. HUTCHINS also moved that the presentation of the Report of the Select Committee on the Bill to amend Act XXV of 1867 (*Printing-presses and Books*) be postponed for a fortnight.

The Motion was put and agreed to.

EXCISE (MALT LIQUORS) BILL.

The Hon'ble SIR DAVID BARBOUR moved for leave to introduce a Bill to amend the Excise Act, 1881, and the Bengal Excise Act, 1878. He said:—

"There are certain portions of India in which the law, as it at present exists, does not authorise the levy of a duty per gallon on beer and other fermented liquor. The object of the present Bill is to make it possible to levy such a duty. In former years the defect in the law to which I have referred did not give rise to any inconvenience, because in those portions of the country where the defect existed either beer was not made at all, or beer was made of such a kind and in such manner that it was not desirable or even practicable to impose a duty per gallon on it.

"In recent years, however, a considerable industry has come into existence having for its primary object the supply of beer to Government for sale to the British soldier.

"So long as the industry was confined to the manufacture of beer for sale to Government the want of legal authority for the levy of duty was not felt;

Indian-brewed beer sold to Government was exactly on the same footing in respect to non-payment of duty as beer imported from England by Government.

"The industry has, in the course of time, increased in importance, and a considerable quantity of Indian-brewed beer is now sold to the general public. There are three reasons why Indian beer sold to the public should now be taxed: firstly, because it is the general policy of Government to tax all spirituous and fermented liquors; secondly, because it is unfair that Indian-brewed beer should escape a tax which imported beer pays; and thirdly, because the tax will bring in a certain amount of revenue.

"The amount of revenue to be obtained is not great; it will probably amount at the present time to some Rs. 50,000 or Rs. 60,000 yearly, and from this sum must be deducted the cost of collection. It would have been considerably less some years ago, before the industry had attained its present proportions.

"The question whether legislation should be undertaken for the purpose of taxing Indian beer has been more than once under the consideration of the Government of India, but action was deferred in consideration of the small amount of revenue which the measure would produce. I have thought it necessary to explain the reasons for the inaction of Government, because theories of a somewhat malicious nature and really not requiring very serious notice have been invented to account for the non-levy of duty in the past.

"At any rate, I think there need be no hesitation in now undertaking legislation which will, at one and the same time, add to the public revenue, satisfy the requirements of a rigorous political economy, gratify the advocates of temperance, and which, strange to say, appears to meet with the approbation of the brewers—the producers of the article on which the taxation will fall.

"It is provided in the Bill that the rate of duty on Indian-brewed beer shall not exceed that levied on imported beer, which is practically of the same class and quality."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also introduced the Bill.

The Hon'ble SIR DAVID BARBOUR then moved that the Bill be taken into consideration on the 21st proximo.

The Motion was put and agreed to.

The Council adjourned to Friday, the 7th March, 1890.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 5th March, 1890.

Government of India Central Printing Office.—No. 608 L. D.—6-3-90.—308.—A. McL.

Luke 7/3

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 7th March, 1890.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.
The Hon'ble A. R. Scoble, Q.C., C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Rájá Durga Charn Laha, C.I.E.
The Hon'ble Maung Ôn, C.I.E., A.T.M.
The Hon'ble Muhammad Ali Khan.
The Hon'ble R. J. Crosthwaite.
The Hon'ble Sir A. Wilson, Kt.
The Hon'ble F. M. Halliday.
The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.

GUARDIANS AND WARDS BILL.

The Hon'ble MR. SCOBLE presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Guardian and Ward. He said:—

"This Bill was introduced nearly four years ago by my hon'ble friend Mr. Ilbert, and, as the constitution of the Council has changed considerably since its introduction, I think it desirable, in presenting the Report of the Select Committee, to say a few words as to the objects of the measure and the general scope of its provisions.

"The Hindu and Muhammadan, as well as the English, law lays down certain general principles regarding the relationship of guardian and ward, and the application of these general principles has been regulated by several enactments of the Indian legislature. Besides the numerous local Regulations and Acts

constituting Courts of Wards for the different Provinces, and defining their powers and duties, there are several Acts of this Council making provision for the care of the persons and property of Hindu and Muhammadan minors not brought under the superintendence of these Courts. Act XL of 1858 was passed with this object for the Bengal Presidency, and its operation extends also to the North-Western Provinces and Oudh, the Punjab, Lower Burma, the Central Provinces and Ajmere. Act XX of 1864 reproduces for the Bombay Presidency, with some variations, the Bengal Act of 1858. Act IX of 1861 amends the law for hearing suits relative to the custody and guardianship of minors in British India generally. As regards minors who are European British subjects, the Supreme Courts, and afterwards the High Courts, had jurisdiction under their Charters; and Act XIII of 1874 provided for minors of this class resident in those parts of the country to which the jurisdiction of the chartered High Courts does not extend.

"In 1881 the Bombay Government drew attention to certain defects in Act XX of 1864, and suggested an amendment of the Act in order to remove difficulties which had been experienced in the administration of minors' estates under its provisions. Examination showed not only that the Bombay criticisms were sound as regards the particular Act in force in that Presidency, but that several of them were applicable to the Bengal Act also, and that there was room for material improvement both in the form and in the substance of the Acts generally. Before taking action, however, Local Governments and other authorities were consulted, with the result that the Bill now before the Council was introduced by Mr. Ilbert on the 12th of March, 1886.

"In his speech on that occasion my hon'ble friend indicated with great clearness the lines on which the Bill had been framed.

"'Nothing,' he said, 'can be further from my intention than to interfere with Hindu family customs or usages, or to force Hindu or Muhammadan family law into unnatural conformity with English law. But, on looking into the European British Minors Act, which was framed with special reference to the requirements of what may be called English minors, it appeared to me that almost all its simple and general provisions were applicable, or might with a little modification be made applicable, to Hindu and Muhammadan as well as to English guardians. . . . . Accordingly what I have done has been to take as my model the European British Minors Act, which is the latest and fullest of the Indian Acts relating to guardians, and to frame on its lines an Act applicable as a whole to all classes of the community, but containing a few provisions limited in their application to particular classes. . . . . It is not intended by this measure to make any alteration in Hindu or Muhammadan family law.'

"In the second place, my hon'ble friend stated—

"'The Bill will not repeal or supersede the enactments relating to the different Courts of Wards. The provisions of those enactments,' he said, 'are intimately connected with the administrative machinery of the different Provinces; and it would be either impossible, or at least very difficult, to supersede them by a general Act applying to the whole of India. They will accordingly be left outstanding. The Bill will relate only to such guardians as are appointed or recognized by the ordinary Civil Courts, and there will be an express saving for the jurisdiction and authority of the different Courts of Wards.'

"Lastly, my hon'ble friend proposed,

'in deference to what appear to be the views of the High Courts on this point, . . that the jurisdiction of the High Courts under their Charters is to be maintained alongside of their jurisdiction under the Act.'

"Since the Bill came into my hands the principles thus laid down have been carefully adhered to. Its provisions have been most attentively considered by two Select Committees, and it has been twice referred for opinion to Local Governments. If it now fails of completeness as a consolidation of the law on the subject to which it relates, it is not for want of consideration, but because consideration has shown the difficulties which stand in the way of complete treatment of so complicated a subject. *Ad ea quæ frequentius accidunt jura adaptantur*: exceptional cases must be left to be dealt with by the Courts of Law, as they arise.

"I do not propose to take up the time of the Council with a minute examination of the provisions of the Bill, but merely to call its attention to some of its principal enactments.

"In the first Chapter a minor is defined to mean a person who, under the provisions of the Indian Majority Act, 1875, is to be deemed not to have attained his majority. That Act fixes the age of eighteen as the age of majority generally for persons domiciled in British India; but it postpones it to twenty-one years in the case of minors of whose person or property a guardian has been appointed by a Court of Justice or who is under the jurisdiction of a Court of Wards. In the opinion of the Select Committee it was considered desirable to adopt this definition, rather than leave the matter open to discussion. Where there is a distinct provision of the law upon any particular subject, it should, I think, unless the law is shown to require amendment, be followed in subsequent legislation. Acting on this principle, while adopting the definition of European

British subject given in the Code of Criminal Procedure, the Select Committee has extended that definition so as to include any Christian of European descent.

"In Chapter II, which relates to the appointment of guardians, we have provided (section 6) that in the case of a minor who is not a European British subject nothing in the Act shall be construed to take away or derogate from any power to appoint a guardian of his person or property, or both, which is valid by the law to which the minor is subject. And we provide that the Court may, upon proper application, either appoint or declare a person to be guardian, when it is satisfied that it is for the welfare of a minor that the care of his person or the management of his property should be entrusted to a guardian. We thus recognize both species of guardianship—that which arises independently of, as well as that which is created by, the action of the Courts. The High Court of Calcutta had expressed the opinion that, 'without compelling a *de facto* guardian in every case to come to the Court for a certificate, the Bill should be so framed as to make it necessary for guardians of large estates to place themselves under the control and supervision of the Court.' A special reference was made to ascertain the general opinion of the public on this point, with the result that the Select Committee have not adopted the suggestion of the High Court. The opposite view is tersely expressed in a letter from the Government of the North-Western Provinces and Oudh:—

"'After carefully considering the suggestion of the Hon'ble the Judges of the High Court at Calcutta, the Lieutenant-Governor is decidedly of the opinion that it is undesirable to add to the Guardians and Wards Bill any provision which would have the effect of making it compulsory in these Provinces to the guardians, even of large estates, to place themselves under the control of the Civil Courts. The facilities afforded by the present draft Bill for bringing estates, where that course is desired in the interests of the minor, under the charge of the Civil Courts are, he considers, amply sufficient. Any legislation which made it compulsory instead of optional might have the effect of deterring in many cases the fittest persons from accepting responsibility which is of an onerous nature even when exercised independently, and would add largely to the work of the Civil Courts without, as far as His Honour can see, securing any material compensating advantage to the estates.'

"To the same effect is the opinion of the Bombay Government:—

"'It appears to the Governor in Council, on a consideration of the advantages and disadvantages of the proposal that every *de facto* guardian of a minor and his estate should place himself under the superintendence of the Civil Courts, to be both needless and undesirable that such an enactment should be embodied in the Bill. In cases of large

estates or of complicated transactions, the *de facto* guardian will almost necessarily come to the Court for his own security, or will be brought into the Court by persons interested in the minor or his estate. If litigation and official interference can be avoided,—and in many cases they are clearly unnecessary,—it is distinctly beneficial that they should be avoided. The superintendence of a Court over the minute and detailed management of a considerable property or business cannot, in the opinion of the Governor in Council, be exercised without a great deal of expense, and must lead to elaborate explanations and measures for putting every transaction into an indisputable shape, such as are a serious clog on the effectual administration of ordinary affairs.'

"The Lieutenant-Governor of the Punjab is equally adverse to the proposal. The Secretary to the Government of the Punjab writes:—

"'As the Bill now stands, no guardian is compelled of his own motion to place himself under the control of the Court; but the Judge is empowered to apply the provisions of the law on the application of the Collector, the relative or friend of a minor, or a person desirous of being, or claiming to be, the guardian of the minor. It is because the Bill does not compel the Court to appoint or declare a guardian except upon good cause shown that in Sir James Lyall's opinion its provisions are not unsuitable to the present circumstances of the Punjab. If, however, the suggestion made by the Judges of the Calcutta High Court is accepted, rendering it necessary that in certain cases the law shall be applied, the Lieutenant-Governor would prefer that the provisions of the Act should not be applied to this province until extended by a Notification issued by the Government of India on the recommendation of the Local Government. It must be remembered that in the Punjab there are no large zamindari estates of the character of those existing in the North-Western Provinces and in Lower Bengal, and the Collector of a Punjab district has ample opportunities of knowing whether the interests of a minor who owns considerable property demand the assistance of the Court to secure him from loss in the management of that property. Therefore to compel all guardians of large estates to place themselves under the control and supervision of the Court would be to legislate for a condition of things scarcely existent in this province, where more interference than is absolutely necessary is to be deprecated.'

"Raja Rajendralala Mitra, in a letter of 25th October, 1889, speaking from an intimate knowledge of the feeling of Native society on the point, writes:—

"'It is well known that private guardians are more economical and useful than official guardians, but that such offices being entirely gratuitous there is no temptation to accept them, and every attempt to make them irksome by unnecessary multiplication of duties and responsibilities, by calls for periodical accounts, securities and bonds, is to cause a strong revulsion of feeling which would greatly reduce the number of eligible candidates. Nor is it at all required in the interests of wards and out of regard for the wills of the testators who provide for the custody of their minor sons and daughters and their

property. The strongest point urged refers to the submission of periodical accounts; but I am disposed to think it will be of little practical utility—a vain formality at best. I know of no Court which will have the patience and the leisure necessary to go through the domestic accounts of little boys; and, if it did, it will, in the absence of a contending party, do nothing to prevent waste or peculation.'

"It appeared to the Select Committee that there was much force in these objections, and, while giving guardians every opportunity and inducement to place themselves under the control of the Court, we have not thought it necessary or desirable to compel them to do so.

"Another important question has arisen with regard to the appointment of guardians of minors who are members of undivided Hindu families. My valued friend, our late colleague Rao Saheb Vishvanath Narayan Mandlik, whose assistance in the earlier labours of the Committee on the Bill I desire gratefully to acknowledge, called attention to this difficulty when the Bill was introduced, and framed a section which he considered would meet the case. He proposed that, when the Court had reason to believe that the interests of such a minor were in peril, it might appoint or declare a guardian to protect those interests, under such restrictions as would prevent him from interfering unduly with the powers of the managing member of the family. But upon mature consideration the Select Committee have not accepted this suggestion, which, so far as they can ascertain, is not approved by the Hindu community generally. It is well pointed out by Mr. Bipin Krishna Bose, Government Pleader in the Central Provinces:—

"'Where the property of a minor exists in no other shape than that of an interest in undivided property of a joint family governed by the Mitakshara, it is difficult to understand how a stranger can be introduced into the family to protect the interests of the minor without interfering with the powers of the managing member and in a manner changing the constitution of the joint family.

"'In a joint family under the Mitakshara there is absolute unity of ownership, and no member can claim to have any specific portion of the family income paid over to him as his share. All he can ask for is that he may be allowed the use of the family property along with the other members. For those who are interested in the welfare of a minor member, and who desire to secure to him the full fruition of his rights in the family estate, the only proper remedy is to procure for him a specific share by means of partition. To introduce a stranger in the joint family with powers of interference which must from the nature of the case be to a great extent vague and undefined would only lead to discord and disunion, and is very unlikely to bring about better management of the family estate. Generally, the self-interest of the managing member, and, where there are other adult

members, their supervision over his action, and in many cases ties of natural love and affection, would ensure proper management of the family property, in the benefit of which the minor would participate. Cases are rare where a managing member, by himself or in collusion with the other members, sets about wasting the family estate with a view to sacrifice the rights of a minor member. Under the Dayabhaga, however, the shares of the members are numerally defined before partition, and, although the particular portion which constitutes a member's share remains in an unidentifiable condition until partition, he may demand and obtain of the managing member his share of the family income. In such a case no disruption of the joint family would ensue if the Court were to make provision through a specially appointed manager for the disposal of a minor member's share of the profits for his sole and exclusive benefit.'

"No special provision has therefore been introduced into the Bill to meet these cases, as an adequate remedy appears to be available under the existing law.

"I have now disposed of the two main points of controversy which have arisen upon this Bill. Recognizing the right of the parent to appoint by will or other instrument a guardian for his infant children, the Bill also recognizes the duty of the Court to appoint a guardian where none has been appointed, and to decide between conflicting claims when several persons assert a title to the guardianship. The Bill lays down certain general rules for the guidance of Courts with respect to the considerations to be observed in appointing a guardian, and the most important of these will be found in sections 12, 15, 17 and 19.

"The third Chapter, relating to the rights, duties and liabilities of guardians, is taken principally from the European British Minors Act, and a guardian is placed, in reference to his dealings with the property of his ward, on very much the same footing as an executor or administrator with regard to the property of a deceased person. Section 33 provides that a guardian appointed or declared by the Court may apply to the Court for advice in the execution of his duties, and will be protected if he acts in good faith on that advice. This provision will, it is believed, have the effect of inducing guardians, especially where large estates are entrusted to them, voluntarily to place themselves under the supervision of the Court. Section 39 points out the circumstances under which the Court may interfere to remove any guardian, testamentary or otherwise, from his guardianship.

"The fourth Chapter contains supplemental provisions, the most important of which are those which relate to suits brought or defended on behalf of minors by next friends or guardians *ad litem*. These suits are often merely vexatious,

but are sometimes brought *bonâ fide* for the benefit of a minor whose guardian is either careless or corrupt. Section 53 endeavours to guard against abuse of the power of interference by providing that, if a minor has a guardian appointed or declared by a competent authority, a next friend shall not be allowed to institute any suit on behalf of the minor, except upon notice to the guardian and upon satisfying the Court that it is for the welfare of the minor that he should be permitted to do so. This, it is hoped, will have the effect of preventing much unnecessary litigation."

CHARITABLE ENDOWMENTS BILL.

The Hon'ble MR. SCOBLE also moved that the Report of the Select Committee on the Bill to provide for the Vesting and Administration of Property held in trust for charitable purposes be taken into consideration. He said:—

"The object of this Bill is to provide in India an officer capable of discharging, in regard to certain classes of charities, the functions which are discharged in England by the Official Trustee of Charitable Lands and the Official Trustees of Charitable Funds, and thus to diminish the difficulty and expense which would otherwise attend the devolution of charitable property.

"The scheme of the Bill has, I am glad to say, met with very general approval. It is admitted that the appointment of such an officer will be a convenience and advantage, as it will have the effect of securing the *corpus* of the trust-property without any interference on the part of the Executive Government with the administration of the trusts themselves. But doubts have been expressed in some quarters whether the Bill does not go too far; while others entertain the opinion that it does not go far enough.

"When I introduced the Bill in June last I stated that the charitable purposes to which it would apply were limited in accordance with the policy which dictated Act XX of 1863, by which the Government of India relieved its officers from all duties involving any connection with mosques, Hindu temples and other similar religious establishments. In the Bill as approved by the Select Committee these purposes include relief of the poor, education, medical relief and the advancement of any other object of general public utility, but do not include purposes which relate exclusively to religious teaching or worship. It follows that the provisions of the Bill may apply to trusts for purposes partly charitable and partly embracing religious teaching, but I see no objection

to this so long as the Treasurer is a bare trustee or custodian of the trust-property, and the application of the Bill to a charitable endowment is dependent on the consent not only of the parties interested in the trust but of the Local Government. The necessity for this two-fold consent provides, in my opinion, every necessary safeguard against an improper use of the Bill that the most orthodox Hindu or Muhammadan or (I may say) Christian could require; and the important principle of non-interference by Government with the religious institutions of the country is thereby fully maintained.

"It may be satisfactory that I should quote to the Council the opinions on this point of some of the most important representative bodies among the Native community which show how public opinion is divided on the subject, and how premature it would be to reverse the policy which a quarter of a century ago transferred the protection of religious endowments from the executive to the judicial power. The Secretary of the British Indian Association writes—

"'After having carefully considered the provisions of the Charitable Endowments Bill my Committee are of opinion that it will remove a defect in our administrative agency the prejudicial effects of which are widely felt. An officer exercising the functions similar to those of the Official Trustee of Charitable Funds in the United Kingdom is required for this country. The Committee think that the proposed appointment of a Treasurer of Charitable Endowments would supply the want. The provision empowering Local Governments to invest public officers with the powers and functions of a 'corporate office' will further remove the inconvenience and legal disqualifications which at present attend the practice of making charitable endowments in favour of District Collectors and other public officers. The proposed measure therefore commends itself to the approval of the Committee.

'The Committee beg to observe with satisfaction that the Bill is confined to charitable endowments only. They think it would be a mistake to extend it to religious endowments, or to take under its purview endowments partly religious and partly charitable. They believe, however, that it is not the intention of Government to widen its sphere in such way.'

"The two Muhammadan Associations of Calcutta, on the other hand, would have preferred a larger application of the measure. The Secretary to the Central National Muhammadan Association is directed by his Committee to say that they—

'consider the Bill might have been amplified in scope so as to cover such endowments as are quasi-religious in character,'

and the Secretary to the Muhammadan Literary Society writes that—

'inasmuch as the Bill does not contemplate to bring under its operation the religious endowments, the Committee has nothing to say regarding the provisions contained therein. Most of the existing Muhammadan endowments,' he adds, 'as it appeared from the enquiry made by the Muhammadan Educational Endowments Committee which recently sat in Calcutta, are religious or quasi-religious in their character, and therefore the Committee of the Muhammadan Literary Society begs to submit that the Bill in its present form does not provide against the malversation of such endowments. Under the Muhammadan law it is one of the legitimate functions of the ruling Power to protect endowments from misappropriation, and the Committee would respectfully, but earnestly, suggest that the Bill be so extended as to meet the want which has been felt by the Muhammadan community since the repeal of Regulation XIX of 1810.'

"It is clear from these communications that opinions are as divergent as ever. But, while I sympathize with the desire of the Muhammadan community in Bengal to secure better management for their charitable endowments, I must remind them that the prevention of malversation is not the object of this Bill.

"The question of the management of such institutions was dealt with by Act XX of 1863, and it is not the fault of the Legislature if full advantage has not been taken of its provisions. When the Regulation of 1810 was repealed, the control of local committees was substituted for that of Government officers, in the hope that mosques, temples and other religious establishments would be conducted thenceforward in accordance with the general wishes of those most closely interested in their maintenance. If this result has not been attained, it is not the fault of the law but of a failure on the part of the communities themselves to avail themselves of it. The present Bill advisedly abstains from restoring the responsibility of Government in these matters; and this is, I think, in accordance with public opinion generally. The Collector of Surat took the opinions of the representatives of the three main religious bodies in that city—Parsis, Muhammadans and Hindus—on the Bill. The Parsi was ready to give it a liberal interpretation, but 'both the Musalman and the Hindu gentlemen were much against any semblançe of interference with religious endowments'; and this, I am disposed to believe, fairly represents the state of feeling all over the country.

"Coming now to the proposals of the present Bill, section 3 provides that the Governor General in Council may appoint an officer of the Government by the name of his office to be Treasurer of Charitable Endowments for the

territories subject to any Local Government. It is intended that the Comptroller General shall fill this office in Bengal, and the Accountants General in Madras and Bombay. For the purposes of the Bill each of these officers will be a corporation sole, having perpetual succession and a corporate seal; and his duty will simply be to hold any property vested in him as a bare trustee. The high position of this officer will be a sufficient guarantee that the property will be safe in his hands; but provision is made in section 9 for the publication of his accounts, and in section 13 for the form in which they are to be kept and the mode in which they are to be audited. As the keeping of these accounts, the charge of investments, the collection of income and the performance of other duties which will fall on the Treasurer will be a cause of expense which cannot rightly be charged against the public revenue, the Governor General in Council is empowered to prescribe the fees which shall be paid for these services.

"The manner in which charitable endowments falling within the scope of the Bill may be brought under its operation is described in sections 4, 5 and 6 of the Bill. The services of the Treasurer may be made available both for existing, and for entirely new, trusts. Where property is already held in trust the person or persons acting in the administration of the trust, or a majority of them, and where it is intended to devote property to a charitable purpose the person or persons proposing so to devote it, may apply to the Local Government that the property may in either case be vested in the Treasurer and a scheme settled for its administration. The Local Government may thereupon, if it thinks fit, proceed to settle a scheme, giving effect to the wishes of the author of the trust so far as they can be ascertained and as is reasonable; and the scheme so settled will not be liable to be questioned in any Court. To this proposal a good deal of objection has been taken; it is said that the Local Government has not the knowledge or experience necessary to deal with such matters, and that they ought to be left to be dealt with by the Courts of law. But it must be borne in mind that no one need come to the Local Government unless he likes, and that those who do come will not be without good reasons for preferring the simple and inexpensive procedure provided by the Bill. It is not contemplated or intended that a Local Government should interfere in any case of doubt or dispute; and I should imagine that it would always consult its Advocate General or other Law Officer before taking action upon any application. The jurisdiction of the Courts in contentious cases will be left untouched; in cases where there is no contest, it is surely not necessary to compel a resort to the Courts.

"Nor does it appear to be necessary that the Treasurer should be placed under the control of the Court rather than of the Government. He will have nothing to do with the administration of the charity funds; he will simply hand over the income to the persons who, under the scheme, are entrusted with its administration, but who, in their turn, are left subject to the ordinary law in regard to the malversation or misappropriation of any funds that may come to their hands. In order to avoid any doubt on this point the authority of the Advocate General at a Presidency to take action in regard to any charity is expressly reserved by section 15 of the Bill."

The Hon'ble MR. HUTCHINS said:—

"With Your Lordship's permission I wish to say a few words regarding the applicability of this Bill to religious endowments.

"In 1863 the Executive Government divested itself and its officers of all powers and obligations connected with the administration of religious trusts and institutions. The powers and duties which till then had devolved on the Board of Revenue and District-officers were transferred to committees, and are, or ought to be, exercised by these committees subject only to the control of the District Courts. We hear a good deal about the inefficiency of these committees, but I am disposed to agree with my hon'ble friend that, if there has been a failure, it has not been the fault of the law but is principally, if not entirely, due to inertness and indifference on the part of those interested in the institution. The law provides abundant means for enforcing through the Court the proper discharge of their duties both by the supervising committee and by the manager in direct charge. I speak on this point from more than ten years' experience in the chief Court of a district containing two of the wealthiest and most venerated temples of the south—those of Madura and Rameswaram It happens that these are good examples of the two great classes into which religious establishments were divided by the Act of 1863, the pagoda of Madura falling under section 3 of that enactment, while that at Rameswaram comes under section 4. The latter class is far more difficult to deal with, but this was the case even before the legislation of 1863. Both these temples came before me judicially on more than one occasion, and I may say without any fear of contradiction that the result, especially to that at Madura, was highly advantageous; that the orders issued effected a great improvement in the general management, and that in particular the funds were properly invested and the accounts reformed and periodically published in a manner which any one interested could understand.

"There is certainly no chance whatever that the Government will consent to reverse or materially modify its policy of non-interference, but it seems open to question whether there would be any serious objection to the corpus or principal fund even of a purely religious endowment being vested in some public officer as a bare trustee or custodian. This could hardly be said to amount to interference with the trusts themselves, and it seems to me—I am speaking for myself alone, and even for myself I do not express any decided opinion, but it seems to me—that any unanimous or very general wish on the part of any of the main sections of the community, that their religious endowments should be treated in this way, would be entitled to great consideration at the hands of the Legislature.

"Meanwhile, however, when this Bill becomes law, it will be applicable to trusts for charitable purposes, but not to trusts exclusively for the purpose of religious teaching or worship, and perhaps it is desirable that I should explain by means of an illustration what I understand to be the true import of this definition. It implies that it will not be a fatal objection that one of the objects is to promote religious teaching or to provide for religious worship. The best illustration which I can offer is the case of Diocesan schools, which the Committee had in view when it framed the definition. The purpose for which Diocesan schools have been established is not so much to give religious instruction as to prevent general education from being wholly secularized: there is some direct religious teaching, and the work of each day is begun and ended with some act of Christian worship; but the main aim and object is to impart a sound general education, pervaded throughout with a moral and religious tone. The funds of any trust founded on a mixed basis of this character may certainly be vested in the Treasurer, and the Local Government will be competent to sanction a scheme for its management. On the other hand, purposes exclusively religious are expressly excluded, and of course Local Governments will not permit any colourable evasion of the principle. In other words, if it should appear that the trust has been constituted mainly for a religious purpose, but that in order to bring it within the Act some secular purpose has been superadded, the application to vest the property in the Treasurer will be rejected. Doubtful cases must be expected to occur, but I am at present disposed to think that a safe rule to follow, while the law remains as enacted in this Bill, will be to grant the application only in respect of the secular objects, where these can be severed from the religious purpose with which they are combined; while, where they are all so incorporated together as to be incapable of separation, the application should generally be rejected if the greater, or even a large and substantial, part of the fund is to be expended

on a direct religious purpose. Certainly no trust should be accepted which involves the framing of a scheme regarding the detailed conduct of religious teaching or worship.

"I have thought it desirable to make these few observations because the powers to be vested in Local Governments are to be subject to the control of the Governor General in Council, and such control will have to be exercised in the Home Department. It will probably be desirable that the Government of India should be consulted before Local Governments undertake any trusts which are not clearly within the somewhat indefinite boundary line which has been enunciated."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS BILL.

The Hon'ble MR. SCOBLE also moved for leave to introduce a Bill to enable the Comptoir National D'Escompte de Paris to sue and be sued in the name of the Chief Manager for the time being of the Indian Agencies of the said Comptoir. He said:—

"This is in the nature of a private Bill, and is a reproduction, in favour of the Comptoir National D'Escompte de Paris, of the legislation of 1864 and 1867 in favour of the Comptoir D'Escompte de Paris, which has gone into liquidation.

"The Comptoir National D'Escompte de Paris is a French Banking Company, having its seat in Paris and constituted under French law, which carries on business in British India. The provisions of the Indian Companies Act are not applicable to such a Company; but under a treaty entered into, on the 30th April, 1862, between Her Majesty the Queen and the Emperor of the French, it was among other things agreed that the High Contracting Parties should mutually 'grant to all Companies and other Associations, commercial, industrial or financial, constituted and authorized in conformity with the laws in force in either of the two countries, the power of exercising all their rights, and of appearing before the tribunals, whether for the purpose of bringing an action or for defending the same, throughout the dominions and possessions of the

other Power, subject to the sole condition of conforming to the laws of such dominions and possessions.'

"The object of the Bill is to give the Comptoir National the benefit of this stipulation. It is clearly necessary, for the protection of this Bank and of those who have dealings with it, that no technical difficulties should stand in the way of its suing or being sued. The Bill accordingly provides that suits may be brought by or against the Comptoir National in the name of its Chief Manager, and under this designation is included an acting Chief Manager, and any person being or acting as Manager of the local Agency situated within the jurisdiction of the Court in which proceedings are taken. Analogous provisions are introduced for the purpose of facilitating criminal prosecutions. For the protection of persons dealing with the Comptoir National, the Chief Manager is required from time to time to file in the High Court memorials containing certain specified particulars, from which the public may derive information as to its constitution and operations. In all these respects the Bill follows the lines of Act VIII of 1864 and Act IX of 1867, under which the Comptoir d'Escompte worked satisfactorily for upwards of twenty years."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also introduced the Bill.

The Hon'ble MR. SCOBLE then moved that the Bill be taken into consideration at the next meeting of the Council.

The Motion was put and agreed to.

The Council adjourned to Friday, the 14th March, 1890.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 11th March, 1890.

Government of India Central Printing Office.—No. 25 L. D.—12-3-90.—308.—A. E. deS.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 14th March, 1890.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding.*
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble A. R. Scoble, Q.C., C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Syud Ameer Hossein, C.I.E.
The Hon'ble Rájá Durga Charn Laha, C.I.E.
The Hon'ble Maung Ôn, C.I.E., A.T.M.
The Hon'ble Muhammad Alí Khan.
The Hon'ble R. J. Crosthwaite.
The Hon'ble Sir A. Wilson, Kt.
The Hon'ble F. M. Halliday.
The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.

ACT XXV OF 1867 AMENDMENT BILL.

The Hon'ble MR. HUTCHINS presented the Report of the Select Committee on the Bill to amend Act XXV of 1867 (*Printing-presses and Books*).

PREVENTION OF CRUELTY TO ANIMALS BILL.

The Hon'ble MR. HUTCHINS also presented the Report of the Select Committee on the Bill for the Prevention of Cruelty to Animals.

COMPTOIR NATIONAL D'ESCOMPTE DE PARIS BILL.

The Hon'ble MR. SCOBLE moved that the Bill to enable the Comptoir National D'Escompte de Paris to sue and be sued in the name of the Chief

Manager for the time being of the Indian Agencies of the said Comptoir be taken into consideration. He said:—

"I have nothing to add to the statement which I made when I explained the objects of the Bill."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned to Friday, the 21st March, 1890.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 14th March, 1890.

Government of India Central Printing Office.—No 62 L. D.—14-3-90.—306.—Jos D'C.

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 21st March, 1890.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble A. R. Scoble, Q.C., C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Syud Ameer Hossein, C.I.E.
The Hon'ble Rájá Durga Charn Laha, C.I.E.
The Hon'ble G. H. P. Evans.
The Hon'ble Maung Ôn, C.I.E., A.T.M.
The Hon'ble Muhammad Ali Khan.
The Hon'ble R. J. Crosthwaite.
The Hon'ble Sir Alexander Wilson, Kt.
The Hon'ble F. M. Halliday.
The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.

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GUARDIANS AND WARDS BILL.

The Hon'ble MR. SCOBLE moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to Guardian and Ward be taken into consideration.

The Hon'ble RAO BAHÁDUR KRISHNAJI LAKSHMAN NULKAR said:—"I beg leave to make one or two observations on the general policy which the Indian Legislature has to follow in steering clear of difficulties presented by the different religions, and the multiplicity of social and domestic customs, to be found among

the different races, communities, castes and tribes into which the Indian populations are divided. These difficulties assume a more or less practical form in the actual administration of the laws passed here, when these touch the dividing line between questions of personal and property rights on the one side and the religious and social or domestic customs and usages having the force of law on the other. Two of the measures which this Council has had to deliberate upon during the present session furnish apt illustrations of the difficulties I am alluding to, namely, the Charitable Endowments Bill (now Act VI of 1890) and the Bill now under consideration relating to guardian and ward. In both a more efficient safeguard had to be provided for a certain description of public and personal properties without unduly interfering with the religious, social and domestic institutions or susceptibilities of the people concerned. The criticisms which gathered round these Bills elicited opinions almost diametrically opposed to each other, the one representing that the measures did not go far enough, and the other expressing doubts whether they might not be said to be going too far for the necessities of the case. In the first instance, while one party expressed the desire that malversation of even religious endowments should be prevented by the Executive Government undertaking their direct management, the other strongly advised strict adherence to the policy of avoiding all connection between District-officers and such management. As regards the Bill under consideration, the questions involved are even more complicated, and consequently the criticisms are not less divergent. It was suggested by some that all guardians should be compelled to place themselves entirely under the direct executive control of the Civil Courts, and those Courts should be further empowered to interpose by taking part in the management on behalf of minors when they are members of undivided Hindu families; while others pointed out the danger of such provisions, which were further shown to be unnecessary in the presence of other less objectionable remedies provided by the existing law. And thus it required quite four years of correspondence and consideration to find a safe way, as far as it was possible, out of all these difficulties It seems to me that in considering both these measures the Select Committees have, so far as they could, steered clear of the dangers both of over-legislation and of unnecessary interference with delicate questions of religious, social and domestic concerns of the people, the general laws relating to the points raised being considered sufficient to meet the contingencies brought to notice. If the parties concerned fail to avail themselves of the ample remedies already provided, such failure is traceable to lack of public spirit and a proper sense of duty on their part. These considerations are peculiarly apposite as regards various topics of social reform which have of late been exercising the minds of my countrymen. While the activities and agitations which are going on

for some time past in the different parts of India are healthy signs of the awakening of the Hindu mind to a sense of responsibility on the all-important subject of social reform, the calls for special legislation now and then made deserves a mature and sober consideration on the part of those who make them. As a general proposition, it is undeniable that in India the interests of minors and women call for special protection, and the statute-book presents evidence of the attempts made from time to time to adequately safeguard those interests. If it could be shown that after actual trials the existing legal remedies are not found sufficient to prevent the authority of parents and heads of families from being flagrantly and criminally abused, it seems to me that an appeal to the Legislature for further help would be appropriate. But the fact must never be lost sight of that, while in these days the laws of a country may provide remedies against abuse of the authority in question, it is for the intelligent, influential and public-spirited citizens to see that these remedies are fully and timely resorted to, and found to be defective, before calling for amendment or blaming Government for the existence of the alleged defects; because the path of the Legislature in successfully handling these delicate matters is no smoother than that of the active social reformer in the presence of the diversity of opinions strongly held and persisted in with phenomenal tenacity by all parties to the controversy."

The Hon'ble MR. EVANS said:—"The Hon'ble Member in charge of the Bill has so thoroughly laid before the Council on the last occasion, when presenting the Report of the Select Committee, the whole history of the main provisions of the Bill, that it is unnecessary for me to follow him upon those points. I desire only to say that, so far as this is a Bill for consolidating the existing provisions, I hope it will be useful in that it gathers them together to a great extent in one Act. As for the remainder, it has been an exceedingly arduous task for the Select Committee, as has just been pointed out, to steer clear of the great difficulties connected with this question. On the one hand, they had to provide sufficient safeguards for the persons and properties of minors, and, on the other, to avoid disturbing the habits and feelings of the Native community, and also they had to avoid giving fresh facilities for a most undesirable class of harassing litigation in which infants are used as pawns on the chess-board of litigation in order to harass adult members of the family. They also had to avoid, so far as possible, throwing upon the District Courts large and responsible duties which they have no practical machinery for performing. The task has been a difficult one, and the Select Committee have endeavoured to meet it in the most practical manner they could. What success they have achieved can only

be discovered by the working of the Act. The success of the Act very much depends upon the discretion with which it may be worked by District-officers. I hope the powers which have been given to the High Courts for assisting the District-officers in the exercise of their discretion by means of rules will prove of aid to them. If the Act is worked with discretion by District-officers, I hope it may prove successful."

The Hon'ble RÁJÁ DURGA CHARN LAHA said :—

"I was a member of the Select Committee which considered the Bill. There were two important points upon which there was considerable difference of opinion. A Committee of the Hon'ble Judges of the Calcutta High Court was of opinion that, without compelling a *de facto* guardian in every case to come to the Court for appointment or a declaration of his title, the Bill should be so framed as to make it necessary for guardians of large estates to place themselves under the supervision of the Court. It is clear from this statement that the Committee of the Hon'ble Judges thought that it was not absolutely necessary for a guardian, in the interests of a minor, to resort to the Court in all cases. By not resorting to the Court the guardian is free to act on his own responsibility, without being hampered with the obligation of making references and applications to the Court for orders regarding every small matter, and he is left in a great measure to act on his own discretion. With all deference to the opinion of the Hon'ble Judges, no legal check should, I think, be devised to harass him in the management even of a large estate under his charge. The only way in which he could be made to place himself under the control and supervision of the Court would be to compel him to submit periodical accounts. It is only in the case of dishonest guardians that such a safeguard would be necessary. Provision is made in the Bill to guard against such contingencies. Sections 36 and 37 provide that all guardians and their heirs are liable to the minor for acts done by the guardian, whether appointed and declared or not; and the Bill gives the Court power to remove a guardian for any wrongful acts. These provisions, I submit, are sufficient to protect the interests of minors whenever their guardians act in a dishonest or wrongful way. In the case of honest and conscientious guardians, any interference by the Court with their management would only tend to cripple their usefulness. These *de facto* guardians act as a rule without remuneration, and to harass them with a liability to file accounts would be to dissuade them from taking upon themselves the trust. The consequence would be that in a large

number of cases inferior persons of doubtful honesty would be entrusted with the management of these estates, while subjecting them to increased expense. The value of the advantage which a minor's estate often derives from the supervision of a guardian, who would only undertake the trust out of regard to the ward, cannot be overrated. No paid agency could do the work of management so efficiently as he would. He would not accept the trust if he were to be troubled with Court interference; and to prevent him from undertaking the work would be to do a great injury to the minor's estate. Under the circumstances, it would have been injudicious, in my opinion, to frame the Bill in such a way as to compel a *de facto* guardian even of a large estate to place himself under the control and supervision of the Court.

"Opinions were also divided as to the expediency of making a provision in the Bill relating to the appointment of guardians in cases in which the interests of minor members of undivided Hindu families are concerned. In undivided Hindu families it is generally, or rather invariably, the next friend of the minor who becomes his guardian. It is either the mother, brother or uncle who undertakes the trust. These persons are particularly interested in the well-being of the estate for the benefit of the minor, and, as a rule, they do their duty to the satisfaction of all parties. It may certainly happen sometimes that such persons may be dishonestly inclined, and in these cases the Court, on satisfactory proof, has the power to compel them to render accounts or to remove them from the management. These remedies, I submit, ought to be sufficient to protect the interests of minors when they are in peril. To put in a stranger as a guardian of a minor in a joint Hindu family would simply be to destroy the family union and thus inflict great injury upon all members of the family. The family is so constituted that, if a foreign element be introduced into it, it will lead to the destruction of the peace, harmony and happiness of all members thereof. It was for these reasons that section 20 of the original Bill has been omitted, and I am glad it was.

"It is my firm belief that the Bill, as revised by the Select Committee, will well protect the interests of minors. There may be individual cases of loss and hardship, but on the whole the advantage, I do not hesitate to say, would far outweigh the disadvantage which may be apprehended."

The Hon'ble SYUD AMEER HOSSEIN said:—"As one of the members of the Select Committee who sat on this Bill in the year 1887 as well as in this year, I beg, with Your Excellency's permission, to say a few words.

"I congratulate the Hon'ble the Law Member on his bringing the labours of the past four years to a successful close. In my humble judgment the great merit of this Bill lies in the fact that it is of a permissive character. While it gives guardians every inducement to place themselves under the control of the Court, it does not compel them to do so.

"The saving clause contained in section 6 guarantees that in the appointment of guardians due regard will be paid to the personal laws of Hindus, Muhammadans, and other sections of the communities residing in this empire; while section 12, sub-section (*2*), makes provision for due observance of the customs and manners of this country on the occasion of the production of a respectable female minor before such person as may be appointed by the Court.

"The provision of section 53 will, I hope, sufficiently guard against abuses arising from vexatious suits which may be brought on behalf of minors by persons calling themselves the next friends of the said minors.

"With these remarks I beg to support the Bill."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

RAILWAYS BILL.

The Hon'ble MR. SCOBLE also moved that the Report of the Select Committee on the Bill to consolidate, amend and add to the law relating to Railways in India be taken into consideration. He said:—

"The first observation that I have to make regarding this Bill is that it is of general application. It extends to all railways in British India, whether belonging to the State or to Companies. A claim has been made by some of the older Guaranteed Companies to have a clause inserted that nothing in the Act should affect existing contracts between the Government and those Companies in the particulars for which such contracts expressly provide; and this claim has received the support of very high authority. But, upon careful consideration, the Select Committee decided not to introduce such a clause into the Bill. When I laid the draft before the Council in October, 1888, I stated that in framing the Bill care had been taken to maintain the provisions of those contracts so far as they are consistent with a due regard to the public interest; and in the Bill,

as amended by the Select Committee, this condition has been scrupulously observed. Indeed, I am not sure that in our anxiety not to interfere with vested rights we have not given a more liberal interpretation to some of the provisions of these contracts than a Court of law would have done; and I think it will be found, upon a candid examination, that there is nothing in the Bill to affect injuriously the contract rights of the Companies so as to give them any reasonable ground of complaint.

"It would be improper for me to occupy the time of the Council by a minute examination of these contracts; but I may say that, in regard to four Companies, the contracts provide that they shall carry on the business of carriers of goods and passengers in accordance with the provisions of the law of India for the time being: in regard to five others the contracts contain a clause barring claims in respect of the prejudicial effect upon the undertaking or the profits thereof of any Act of the Indian Legislature of general applicability for the time being in force; and in regard to the remaining four Companies the contracts contain no special provision on the point, but provide that the Companies shall carry on the business of common carriers of goods and passengers by railway. It is clear from this enumeration that, in regard to the majority of contracts, there is no necessity for any special reservation.

"The four Companies whose contracts contain no express clause on the subject are the Great Indian Peninsula Railway Company, the Bombay, Baroda and Central India Railway Company, the Madras Railway Company, and the Great Southern of India Railway Company. Of these the last-mentioned may be left out of account, as its contract will expire in the course of the next few months; so that we are left with three Companies only in whose favour a reservation of contract rights might be operative. I will not pause to discuss the question whether or not, having contracted to carry on the business of carriers in a particular country, those Companies must not be held to have contracted to carry on that business in accordance with the law for the time being in force in that country. I prefer to call the attention of the Council to the provisions of the Bill which, it is urged, may be found to conflict with the terms or with the tenor of the contract. These provisions will be found in sections 42 to 44 of the Bill, and enact that it shall be the duty of a railway administration—

(*f*) to abstain from making or giving any undue or unreasonable preference or advantage to or in favour of any particular person or Railway Administration or any particular description of traffic:

(*2*) to afford all due and reasonable facilities for receiving and forwarding the traffic carried by other railways so as to supply a convenient continuous line of communication and for the return of rolling-stock:

(*3*) to quote, and accept the apportionment of, through rates.

"These provisions introduce no novelty into railway legislation; they have been in force in England for many years; they are called for by the development of railway enterprise in India; they are in accordance with the public interest; and I can find no reason, in the silence of the contracts regarding them, for hesitating to make them directly applicable to the Companies in question. The extension of railways throughout India has brought about a state of things which was not contemplated when the contracts were made, and for which the contracts make no provision; it would be unreasonable, as well as detrimental to the public interest, to hold that Railway Companies which, under legislative Acts, have been granted a species of monopoly for the public benefit, are exempted from subsequent legislation in regard to the restrictions under which, as circumstances change and new conditions arise, that monopoly is to be exercised.

"Passing now to the principal provisions of the Bill, the first point to which I desire to draw the attention of the Council is that the existing right of railway administrations to charge terminals is expressly recognized. In section 3 (*14*) terminals are defined to include charges in respect of stations, sidings, wharves, depôts, warehouses, cranes and other similar matters, and of any services rendered thereat. Section 45 allows reasonable terminals to be charged; and section 46 points out the method in which the question of reasonableness in regard to terminals may be authoritatively decided. In these provisions we have followed the English law. Railway administrations perform, in regard to goods, a great many services which would otherwise have to be performed by the servants of the owners of the goods, and for the proper performance of these services they have provided, at considerable cost, accommodation and appliances which greatly facilitate the transaction of business. For these services railway administrations in India have from the first been allowed to charge terminals. These services are for the benefit of the public, and, not being included in the mileage rate for the mere carriage of the goods, have to be paid for separately. It was suggested to the Committee that the levy of terminals should be allowed only at stations at which goods are actually received or delivered, and that no terminals should be leviable where tranship-

ment in the course of the journey was rendered necessary by a break of gauge; but the Committee did not accept this suggestion, preferring to leave it to the proper authority to determine what would be a reasonable terminal under such circumstances.

"Chapter II, in regard to the inspection of railways, seems to call for no remark. In Chapter III, relating to the construction and maintenance of works, the Select Committee, acting upon a suggestion of the High Court at Calcutta, has made the exercise of the powers of railway administrations to interfere with roads, water-courses, subterranean pipes, and so forth, subject to the control of the Governor General in Council, who will, in these respects, fulfil the functions of the Board of Trade in England. The same chapter provides for the assessment of compensation for interference with private rights, and for the construction of accommodation works for the public convenience.

"Chapter V relates to the appointment and powers of Railway Commissions, and this part of the Bill has provoked a good deal of discussion. It is admitted that such a tribunal is desirable on many grounds, but exception has been taken to its composition and to its probable costliness. The Bill proposes a Court of three Commissioners, one of whom is to be a Judge of the highest Court of Civil Jurisdiction in the province in which the Commission is held, and the other two Lay Commissioners, of whom one at least must be of experience in railway business. This would enable the Governor General in Council to constitute, in Bengal for instance, a Commission consisting of a Judge of the High Court, the Director General of Railways and the President of the Chamber of Commerce. Such a tribunal, in the opinion of the Select Committee, would command public confidence to a greater extent than a Commission composed of inferior Judicial officers or men of lower professional or commercial standing. For it is to be borne in mind that the Commission is only to be appointed when, in the opinion of the Governor General in Council, there is a *dignus vindice nodus;* its function will be rather to settle principles for the guidance of railway administrations in cases of special importance or likely to be of frequent occurrence; and its decisions will form precedents. That such a tribunal will be somewhat costly I have no doubt; but my experience leads me to anticipate that it will not be greatly more expensive, while it will be certainly less dilatory, than an arbitration; and its very costliness will have the good effect of causing it to be resorted to only when all efforts at compromise have failed. Moreover, having regard to the large amount of private capital invested in Indian railways, the Select Committee were of opinion that a tribunal likely to be less independ-

ent of Government influence than that proposed in the Bill would not give satisfaction, especially if the dispute happened to be between a Guaranteed Railway Company and a line owned by the State.

"Chapter VI, in regard to the working of railways, goes into somewhat fuller detail than is thought necessary by some of the critics of the Bill; but while it is undesirable, and indeed impossible, to legislate for all contingencies, and much must be left to be dealt with in rules made by the railway authorities themselves as occasion may require, there are some matters as to which the Legislature both in England and in India has deemed it advisable to make specific enactments. These are accordingly reproduced in the Bill. There is one new section which requires notice, and that is section 64, which provides that in every train which is to run for a distance exceeding fifty miles a third-class compartment furnished with a closet shall be reserved for females. This may seem a small concession, but the information laid before the Select Committee justifies the belief that it will meet the real difficulty. As regards male passengers, there is no case made out which countervails the objections raised against the general provision of such accommodation in third-class carriages. The statement which I made when introducing the Bill, as to the short distances which the bulk of these passengers travel, is amply borne out by a recent report of the East Indian Railway Company, from which it appears that, of a total of (roughly speaking) six millions of third-class passengers, 20 per cent. travelled less than 10 miles, 45 per cent. less than 20 miles and 72 per cent. less than 50 miles; 12 per cent. travelled between 50 and 100 miles and 16 per cent. more than 100 miles. Those who are familiar with railway travelling in India know the ample opportunities of halting which are afforded by trains which run for long distances; and for short distance passengers it can scarcely be contended that latrine accommodation in the carriages is necessary.

"Chapter VII defines the responsibility of railway administrations as carriers in accordance with the existing law; and, in regard to it, I have received a communication from the Madras Chamber of Commerce, regretting that the exemption of railway administrations from responsibility in respect to goods carried under 'risk notes' has not been modified by the Select Committee. The Chamber points out that 'under existing circumstances railway administrations in India have two schedules of rates for the carriage of goods, both of which are sanctioned by the Government; namely, the full rates which impose on a railway responsibility for the non-delivery of goods, and the reduced rates which are granted on the express condition that no such responsibility is incurred.' This

is not quite an accurate statement. The law imposes on railway administrations the duty of taking as much care of all goods delivered to them for carriage as a man of ordinary prudence would under similar circumstances take of his own goods: but it does not impose the further duty of insuring them. Goods are therefore carried either at owner's risk or at railway risk—for the former a lower rate is charged than for the latter. The object of the Madras Chamber seems to be to require railway administrations to carry goods at their own risk at the same rate as they charge when the goods are carried at the risk of the owners—a responsibility which I should not think they would be inclined to accept. If it were imposed upon them by legislation, they would, I fear, charge railway risk rates in all cases—a result which would be unwelcome to traders, and would not apparently give them much more safety than they now enjoy, as I gather from the letter of the Chamber that the present system 'does not often result in the loss or neglect of goods entrusted to the care of railways.'

"In connection with this Chapter I may notice another proposal which has been made, that railway receipts should be given the same effect as bills of lading. This proposal has not been adopted by the Select Committee.

"In introducing the Bill I stated the objections which to my mind stood in the way of the acceptance of such a proposal. One of these was the inconvenience likely to arise in connection with the exercise by an unpaid consignor of his right of stoppage in *transitu*. A recent case which has been decided by the High Court at Bombay affords a good illustration of this difficulty. A firm at Bijapur sold to a firm in Bombay three parcels of wheat and received from the purchaser *hundis* payable at sight for the purchase-money. The railway receipts were thereupon handed to the purchaser, who promptly endorsed them for value to a third party. The *hundis* were dishonoured on presentation, and the purchasing firm became insolvent. The endorsees of the railway receipts claimed the goods and actually obtained delivery of a portion of them: the delivery of the residue was stopped on a telegram from the original vendor. The High Court held that the railway receipts were not instruments of title within the meaning of section 103 of the Indian Contract Act, and that the unpaid vendor was therefore not deprived of his right to stop the goods in transit by reason of the endorsement of the receipts to secure a specific advance. The endorsee in this case seems to have been an innocent holder; but it is easy to see what a door would be opened to fraud under a different state of facts; and I am not surprised that a very large majority of the members of the Railway Conference, which assembled at Simla in 1888, came to the

conclusion that it was not desirable to give the same legal effect to railway receipts as to bills of lading.

"Chapter VIII relates to accidents and contains no new provisions. In Chapter IX, which deals with offences and penalties, the Select Committee has thought it wise to bring into the body of the Act the more important breaches of the law which have hitherto been dealt with under bye-laws only. It is difficult for the public, and sometimes even for the Courts, to know what is contained in bye-laws, and whether bye-laws are *ultra vires* or not; and the Select Committee were of opinion that the fullest notice, and the completest sanction, ought to be given whenever acts or omissions are made punishable by fine or imprisonment. There is in this Chapter one section to which I desire to call particular attention. It is section 113. It is frequently found that persons get into a train either without a ticket, or with a wrong ticket, and they may do so with or without intention to defraud. In the former Act relating to railways, Act IV of 1879, there were two sections dealing with these cases. Section 31 required the innocent traveller to pay the fare of the class in which he was found travelling from the place whence the train originally started, unless he could prove that he had travelled a less distance; and the aid of the Magistrate might be invoked to compel payment of the fare. Section 32 subjected the fraudulent traveller to a fine which might extend to fifty rupees, in addition to the fare which he ought to have paid. It was represented to the Select Committee that this alternative method of dealing with cases led to vexatious prosecutions being instituted, which involved great loss of time and hardship. Returns which I have seen show cases in which people have been kept waiting for weeks before the charge was disposed of; and, though a conviction may generally be the result, it is clearly desirable, in the interest of the railways no less than of the travellers, that such delays should not occur. The Select Committee therefore resolved to deal with the unticketed or wrongly-ticketed passenger in the same manner as the Post Office deals with an unstamped or wrongly stamped letter. Assuming the want of a proper ticket to be the result of carelessness rather than of dishonesty, it is proposed to exact from passengers not duly provided with tickets an extra charge of the amount specified in sub-section (3) of section 113, and this extra charge will be recoverable summarily on application to a Magistrate if the passenger fails or refuses to pay it on demand. It is hoped that by this simple method the railways will be saved from the loss, and passengers from the annoyance, which is inevitable under the present system. It is only fair that a person who, by his carelessness in not providing himself with a proper ticket, puts not only railway servants but his fellow-passengers to the

inconvenience of what may be serious delay in the movement of the train, should not go scot-free; and, on the other hand, it is certainly not desirable that Railway servants should be tempted to stretch the presumption of fraud against travellers who often err from mere ignorance.

"In Chapter X, section 135 of the Bill, relating to the taxation of railways by local authorities, is of considerable importance. Following the lines of Act XI of 1881, with regard to the levy of municipal taxes on Government property, it provides that a railway administration shall not be liable to pay any tax in aid of the funds of any local authority unless the Governor General in Council, by notification in the Gazette, declares it to be so liable, and in that case the railway administration must either pay the tax, or such a sum in commutation thereof as the Governor General in Council may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable. I need scarcely perhaps say that the intention is not to relieve railways altogether from municipal and local taxation, but to restrict the liability within proper limits. A railway administration seems to be considered a fair subject for every sort of demand. In Madras, for instance, the South Indian Railway Company was required, under section 53 of the District Municipalities Act, to pay a profession tax to the Municipality of Negapatam, and did so for several years. Thereupon the Tuticorin Municipality demanded a similar payment. The Company paid under protest, and upon a reference to the High Court their contention was upheld that payment to one Municipality was sufficient, as otherwise 'the South Indian Railway Company would have to pay as many profession taxes as there are municipal towns through which their railway passes, although they exercise but one profession.' Railways contribute so much to the prosperity of the districts which they traverse, and in this country have been so largely constructed with public funds, that their title to exemption from local cesses has already been recognized by the Legislature in Bengal. Section 8 of Bengal Act IX of 1880 provides that no railway or tramway which is the property of the Government of India, or the dividend of which is guaranteed by the Government, shall be liable to road-cess or public works cess without the previous consent of the Governor General in Council. The present Bill gives a general application to the principle thus affirmed.

"These are the salient features in the Bill, as amended by the Select Committee, to which I think it necessary to call the attention of the Council. In other respects the Bill follows the existing Act or reproduces recent English legislation.

"If the Bill is accepted by the Council, I propose, with Your Lordship's permission, to move that it shall come into force on the 1st of May, 1890, instead of the 1st of April, which is the date fixed in the Bill as reported."

The Hon'ble RAO BAHÁDUR KRISHNAJI LAKSHMAN NULKAR said:—"One of the pressing reforms needed in the law relating to railways in India was to insure a more considerate treatment and better convenience of Native passengers in the lowest class of carriages. Overcrowding and want of closet accommodation, especially for women, have formed subjects of constant complaints on almost all the lines. I am glad to see that sections are now inserted and penalties prescribed on these important points in the body of the Bill. The invariable observance and effectual prevention of infringement of these rules must still depend, almost entirely, upon the degree of efficiency of inspection of the passenger traffic at all stations. No failure on the part of station authorities is more frequent than that of the performance of this part of their duty of firmly preventing overcrowding of the lowest class of carriages. It is not easy for the higher railway authorities to exercise effectual control in all matters over their subordinate establishments, which are scattered over vast areas along the lines, without some extraneous aid from Government and the public. In addition to a system of constant inspection by responsible officers, a complaint book should be made available at each station, in which any public-spirited passenger, seeing these rules infringed, may be able to note down the fact with sufficient clearness so as to facilitate further inquiry, stating the steps he took to bring the same to the notice of the station authorities concerned. It is to be hoped that with this new specific law on the subject, and with the adoption of means necessary for its due observance, we may hear less frequently of its infringement with impunity"

The Hon'ble SIR ALEXANDER WILSON said:—

"The most important part of the Bill is dealt with in the fifth Chapter, on lines generally following the law in England but adapted as far as may be to the circumstances obtaining in India.

"The provision of a tribunal competent to deal with any questions which may arise between railway administrations and the public, and between railway administrations themselves, will supply a want which has long been recognised. And the constitution of the Railway Commission provided by the Bill, consisting of a Law Commissioner, who is to be a Judge of the High Court, and of two Lay Commissioners, of whom one must be an expert in railway business and one may be a representative of the mercantile community or an

other person whom the Governor General in Council sees fit to appoint, will, I am sure, command the fullest confidence of the public.

"Considerable discussion has arisen as to whether the Railway Commission should be, as in England, of a permanent nature, or one specially to be convened as is now provided for in the Bill; and I am of opinion that the recommendation of the Select Committee which is embodied in the Bill is a sound one. I will not take up the time of the Council by entering into detailed reasons for coming to this conclusion. I think that on the grounds of economy alone there is strong reason for adopting the course which has been followed, admitting, which I submit is the case, that the composition of the special tribunal is such as to ensure universal confidence and respect.

"The questions which are likely to be referred to the Railway Commission will be of such a nature that a decision on any of them will be held to be a ruling, and as such will probably obviate any necessity for further reference on the same subject, and thus the expense of maintaining a permanent, separate and expensive machinery to administer the law which is proposed to be enacted, without sufficient work to fully occupy it, is saved.

"The Chapter I am referring to imposes on railway administrations the general duty of receiving, forwarding and delivering traffic without unreasonable delay, and without partiality or undue preference, and the special duty of so treating through traffic at thorugh rates.

"Now, without any reflection on the administration of railways in India in the past, I trust I may be permitted to say that there has been a feeling on the part of the public that they were at least open to arbitrary treatment in some of these respects at the hands of the railway authorities, and that practically there existed no Court of Appeal or means of redress.

"The Bill provides that, if the Governor General in Council is satisfied that any person has just grounds of complaint against a railway administration for breach of any of the duties imposed by the Bill, he may refer the case to a Railway Commission for decision.

"This will afford a ready and, in my opinion, practicable means of redress for any real or imaginary grievance, and will instil a confidence in fair and just treatment which will be distinctly beneficial to the interests of trade and commerce.

"A proposal has been brought forward that the Bill should incorporate a provision to give railway receipts the same effect as bills of lading. This proposition has not been adopted, and wisely so, I think, looking to the wide difference between a consignment of goods in wagons passing over, it may be, various lines of railway under different administrations and a shipment of goods on board a vessel in one port bound to another.

"I cannot see that any provision of the kind would have materially benefited the export trade, and certainly not on this side of India, and would have been a departure which did not commend itself to the railway administrations and which does not seem justified by existing legislation elsewhere.

"The other provisions of the Bill deal chiefly with matters which have been carefully discussed in the light of past experience in the working of railways, and require no comment from me. I would therefore only express my entire concurrence with the Bill in its present form."

The Hon'ble MR. CROSTHWAITE said:—

"I agree with the opinion expressed by the Hon'ble the Law Member with regard to the effect of the Bill on the rights of certain Railway Companies under their contracts, and also with regard to the constitution of the Railway Commission which may be appointed under section 26. I have carefully considered the former question, and I think that the contract rights of the Companies will not be unnecessarily interfered with or infringed by the provisions of the Bill. The provisions of Chapter V, regarding the duty of railway administrations to arrange for receiving and forwarding traffic without unreasonable delay and without partiality, are necessary in order to enable an extensive railway system to be carried on to the best advantage of the public and the railway administrations. Possibly in fixing a through rate the Railway Commission may direct a Company to charge a rate lower than the maximum rate which the Company is authorised by the contract to charge. But, if such a direction were given, it would be because a rate in excess of that enjoined by the Commissioners would have the effect of stopping the through traffic and of depriving the public of the free use of a continuous line of communication. A Railway Company has, I think, no right to complain if it is not permitted to charge a rate which would prevent traffic from passing over its line from another railway and so deprive the public of the benefit of a through route from one part of the country to another.

"As the Hon'ble the Law Member has pointed out, the Bill does not propose to regulate the traffic on railways by original and untried principles. The provisions regarding facilities for traffic, undue preference and through traffic have been in force in England since the passing of the Railway and Canal Traffic Act of 1854, and the Bill follows in this respect the law which after many years' experience was enacted by the Railway and Canal Traffic Act of 1888. We have therefore every reason to believe that this portion of the Bill will be beneficial in its operation. The interests, moreover, of the railway administrations are duly safeguarded; for it is provided by section 26 that a Railway Commission can only be appointed by the Governor General in Council, by section 27 that the Commissioners shall take cognizance of such cases only as are referred to them by the Governor General in Council, and by section 41 that the Commissioners alone shall have the power of enforcing the duties and obligations imposed by Chapter V on railway administrations.

"Then, my Lord, with regard to the constitution of the Railway Commission, I should have been glad if provision could have been made for a less costly tribunal than that contemplated by the Bill; but I think that the questions which the Commissioners will have to decide are so important, and the interests which will be affected by their decisions are so great, that the Legislature is bound to provide for the appointment of the best tribunal that can be obtained. No doubt some questions may arise which a Judge of a status inferior to that of a Judge of a Chartered High Court or of a Chief Court might decide. It is, however, unlikely that it will be necessary to resort to the Railway Commission for the decision of a simple question; and in conferring jurisdiction the Legislature should, I submit, consider, as its usual practice is, the general scope and extent of the subject-matter over which the jurisdiction is to be exercised. The powers which are to be conferred on a tribunal, the extent of the interests which may be affected by its decision and the weight which the decision should carry are the principal matters to be considered. Now, as the questions to be disposed of by the Railway Commission will be, as a general rule, difficult and important questions affecting important interests, I think the Legislature should endeavour to secure that the Court which will have to decide these questions shall be the best Court which can be procured; so that not only there may be the best chance of obtaining a sound decision, but that the decision may carry weight with the public. Therefore, I consider that the Law Commissioner should be a Judicial officer of the highest status, so that we may secure, as far as possible, that the cases referred to the Commission may be well decided, and that the judgments of the Commissioners may give satisfaction to the railway administrations

and to the public. With regard to Judges of High Courts which are not chartered, such as Judicial Commissioners, I think that, besides the reasons I have already given, there are two other objections against giving them jurisdiction. The first objection is that the Judicial Commissioner being the sole superior Criminal and Civil Judge of Appeal for a whole Province, and having also extensive administrative business to dispose of, it would be scarcely possible to appoint him to serve on a Railway Commission without appointing another Judicial Commissioner to act for him and discharge the duties of his office. The second objection is that it is unlikely that any case would come before the Railway Commissioners in which experienced counsel would not be required, and a Judicial Commissioner would probably hold his Court at a place where such counsel could not be obtained except at great expense.

"If the Bill imposes new obligations on railway administrations, it, at the same time, confers advantages upon them. For instance, powers for the construction of railways are now for the first time given to railway administrations by sections 7 and 8 of the Bill; section 10 protects the administrations from being overwhelmed with suits for compensation for injuries alleged to have been caused by the lawful exercise of those powers; section 9 of the Bill gives them power to enter on land adjoining a railway in order to repair the line or to prevent an accident happening thereto; and section 72 settles the law, which is now somewhat doubtful, as to the extent of the responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered to be carried. The responsibility will now be that of bailees for hire, and a railway administration will be held to undertake only that it and its servants will take as much care of the goods delivered for carriage as a man of ordinary prudence would take of his own goods under similar circumstances. Moreover, section 81 limits in the same way the liability of a railway administration for goods which it forwards by inland water for a consignor in a vessel which does not come within the definition of a railway, that is to say, which does not belong to and is not hired or worked by the administration. Then the provisions of section 135, regarding the taxation of railways by local authorities, will afford a very necessary protection to railway administrations, by preventing the imposition of taxes which they should not be required to pay and by providing a method by which the amount payable by them may be assessed. Some local authorities have, it seems, imposed an excessive amount of taxation on railways, and in the case of a railway it is difficult to assess fairly many taxes which might be imposed, such, for instance, as taxes on houses, buildings or lands, or on the persons occupying houses, buildings or lands.

"I will not, my Lord, take up the time of the Council in enumerating the other advantages which the Bill proposes to confer on the railway administrations. I think that the Bill is a great improvement on the present law, and that it will prove beneficial both to the railway administrations and to the public."

The Hon'ble RÁJÁ DURGA CHARN LAHA said:—

"In December, 1888, when the Railway Bill was referred to a Select Committee, I took occasion to urge upon the attention of this Hon'ble Council the great necessity that existed for providing retiring accommodation for third class passengers, who formed the bulk of the passenger traffic of railways, and from whom so large a revenue was derived. It was nothing but fair that some consideration should be shown to them in this respect. Judging from the deliberations of the Select Committee such as have come to my notice, it appears that the question was considered; but what has been the result? The only provision that has been made is a reserved compartment for females with a closet in each train running for a distance exceeding fifty miles. This is no doubt some concession, for which the Native community cannot but be grateful; but what about the men? If regular latrines were found impracticable, could not a similar provision be made for them, at all events experimentally? It would then have been something; at any rate, it would at least have shown that the Legislature was not unmindful of the comfort and convenience of that class of men who are not able to make their wants and feelings known to the governing authorities.

"It has often been said that the comfort and accommodation asked for are not supplied either in Europe or America; but I submit that, the conditions of life being different, no comparison could be instituted between them and this country.

"Representations have been made from various parts of the country pointing out the discomfort and inconvenience experienced by third class passengers. I would take the liberty of quoting here the opinions expressed on the subject.

"The District Magistrate of Bellary, in the Madras Presidency, thinks that—

'every carriage attached to a through train ought to contain a place for the relief of natural wants.'

"Mr. Tagore, the Judge of a certain district in the Bombay Presidency, observes:—

'The great discomfort from which the lower class passengers suffer is the want of latrine accommodation in their carriages.'

"Sir Dinshaw Manockjee Petit, also of Bombay, the late Member of this Hon'ble Council, remarks:—

"'In carriages of some Railway Companies there is no latrine arrangement at all for these poor people,.....and great inconvenience is felt by passengers in that respect.'

"Mr. J. O. Porter, Magistrate of Shahjehanpur in the North-Western Provinces, says:—

"'I should have liked to have seen provisions made for latrine accommodation for third class carriages. . . . No concession would be so popular as this.'

"The British Indian Association, speaking of the general complaint about the want of latrine accommodation for lower class passengers, points out that,—

'if it be found impracticable to have such accommodation in each carriage or compartment, American carriages may more largely be introduced, and they may be so arranged as to allow communication with each other. An entire carriage could be set apart for retiring purposes of male passengers.'

"The opinion of the Punjab Government is very emphatic in this matter. Speaking of the necessity of having latrine accommodation in railway carriages, the Secretary to the Government of the Punjab remarks that, in the opinion of His Honour the Lieutenant-Governor,—

'the Government should have power either to make rules in these matters, or to authoritatively require the railway administration to make rules which would be satisfactory to Government. The reason for this suggestion is that it is already known that discontent is sometimes expressed in regard to these matters, and it seems to the Lieutenant-Governor that as time goes on the natives having occasion to use the railway may wish for more security for their better accommodation in those respects. In a country like England matters of this sort may well be left to private enterprise and the pressure of public opinion. But the case is otherwise in India, where natives going on long journeys must practically of necessity use certain lines of rail, and where they would naturally look to the Government to help them, if they felt they stood in need of assistance.'

"It will be seen from the remarks quoted above that the necessity for having latrine accommodation in third class carriages is widely felt, and it will be a

matter of extreme disappointment to the millions who travel by rail, but who, I repeat, have not the power to make their wants and wishes known to the Legislature, if no arrangement to remove their grievance is made.

"It has been said that the practical difficulties of meeting the want are insuperable. That there are difficulties does not admit of a question. But I submit that contrivances could be made to overcome them I may be permitted here to mention that the Managing Committee of the Bhavnagar-Gondal-Junagurh-Porbundar Railway offered in 1888 for competition a prize for the best design and working model for latrines for third class carriages of metre-gauge railways which should get over 'the serious sanitary and hygienic objections that are believed by many to exist to extension of the present system in common use in India for upper class carriages.' The Consulting Engineer of the Government of India and the Director-General of Railways acted as Judges. In discussing the merits of the designs sent to them they considered 'that the requirements of the case would best be met by a combination of the good features of the several designs.' They gave it also as their opinion that 'if conveniences in the train are considered necessary for both males and females, we suggest that the third class carriages might be arranged on the through passage system with end doors, and one latrine carriage provided at the end of the train. The latrine carriage could be in charge of a travelling sweeper, and the excreta could be retained in the carriage to be removed and deposited at fixed stations *en route*.'

"This opinion, coming as it does from Railway Engineers of such high authority, shows that it is not impracticable to make a design by which sanitary and hygienic objections could be removed. If, then, the difficulties which were apprehended could be removed, I would venture to suggest that some provision should be made to supply the want felt by the people.

"Notwithstanding what has fallen from the Hon'ble Member in charge of the Bill, complaints on this head, I am bound to say, are loud and numerous.

"I hope the Government, in the interests of the millions for whom I speak, will reserve to themselves the power by which they could grant the concession later on, if it could not be granted at present."

The Hon'ble MR. SCOBLE said:—"As regards what has fallen from my hon'ble friend Rájá Durga Charn Laha, I may be permitted to say that the opinions to which he has referred were before the Select Committee, and were

carefully considered by them. Attention was particularly directed to the action taken by the Bhavnagar-Gondal Railway Administration, and to the report of the experts upon the designs submitted to them; but the Hon'ble Member will see, upon a little reflection, that the adoption of the suggestion of a through passage would involve the entire reconstruction of the whole of the rolling-stock of railways in India. This would mean an expenditure which the Select Committee did not consider they were justified in recommending. With regard to the difficulties which are no doubt felt by female passengers travelling in railways, the Native gentlemen who assisted in the deliberations of the Select Committee were of opinion that the provision recommended would meet the the case, if not entirely, at all events sufficiently to prevent any real hardship. With regard to male passengers, who form the bulk of railway passengers, the existing arrangements, if properly availed of, would be found adequate; to do more would add greatly to the cost of travelling. If you put a latrine in every railway carriage, the result will be that the space now occupied by the passengers would be curtailed, and the fare would be proportionately increased. I put it to the Hon'ble Member, and those who take the same view as he does, whether it is not more desirable that Native passengers should suffer a little inconvenience than that they should have to pay a considerably enhanced price for travelling by railway."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that in sub-section (*3*), section 1 of the Bill as amended, for the word "April" the word "May" be substituted. He said:—"The object of this amendment is to give time for the proper circulation of the Act before it is brought into operation."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

ACT XXV OF 1867 AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved that the Report of the Select Committee on the Bill to amend Act XXV of 1867 (*Printing-presses and Books*) be taken into consideration. He said:—

"The Council will remember that Act XXV of 1867, which this Bill is intended to amend, imposes on the printer of every book the obligation to deliver

a number of copies to a local Registrar of Books, and on the Registrar the obligation to pay for such copies at the rate at which the book is sold to the public. Last December I mentioned certain facts which seemed to show that the provision for payment had a demoralizing tendency, and entailed an unfair burden on the tax-payer, and I explained that the main object of the Bill now under consideration was to repeal that provision. In one case, which I described as apparently fraudulent, Rs. 100 had been demanded for each copy of a small pamphlet which the author called 'A New System of Book-keeping.' I have been assured by a gentleman for whose opinion I have much respect that the author had no designs on the purse of Government, but really thought his system would be worth Rs. 100 to any person who would make use of it. But this only serves to strengthen my position, for it shows that the tax-payer has to contend not only against positive fraud but against the extravagant claims of any one who may choose to treat a system as if it were patented, and may demand a royalty fixed by himself for the means of learning it—even when one does not wish to learn it.

"But there is no doubt whatever that there have been many cases of direct cheating. A fresh instance was brought to the notice of the Select Committee, in which three unsaleable copies of an old book were palmed off as a new work by merely substituting another title-page, and many more copies have been similarly got rid of by simply adding the words second, third or some subsequent edition. It has been admitted even by opponents of the Bill that it is a common practice to mark a fictitious price on books because purchasers generally beat it down. I remarked when I introduced the Bill that it was not becoming that the public Registrar should have to institute secret enquiries to prevent his being swindled, and it would certainly be most unbecoming that he should haggle about the price like an ordinary customer. Besides, he is not at all in the position of a customer, who can take the book or leave it according as the price pleases him or the contrary. He is bound to take all three copies, and to pay for them whatever the printer has been able to extract from private purchasers.

"It is perhaps natural that many writers in the Vernacular Press should vehemently oppose the abolition of payment. I have carefully considered all the fair arguments which they have brought forward, but some have chosen to insinuate that my real object after all is one which I expressly disclaimed, namely, to save the finances. But I am not aware that the Hon'ble Member in charge of the finances has taken any interest in my proposal, and I am quite sure that I have no idea myself what saving it will secure. I only know that it will be some-

thing very small, and that we shall probably give a much larger sum in aid of the new Society for the Diffusion of Useful Knowledge, if, as I hope may be the case, any definite and practicable scheme for the encouragement of indigenous literature can be elaborated. The difference will be that at present we pay extravagant prices for all sorts of rubbish which it would be better to check than to encourage, whereas in the future we shall exercise our patronage with some degree of discrimination.

"Proceeding now to notice the chief points which came before the Committee, the most important is that we have cut down the number of copies to be supplied in all cases from two to one. Looking back at the debates of 1867, when Act XXV was before this Council, I find it was stated by the Hon'ble Member in charge that the only object of requiring the second copy was that, 'in case the first should be lost or damaged, it must be replaced.' We do not think it necessary to maintain this additional burden on authors or publishers in order to meet such a contingency, especially as we find that it has led to a vast accumulation of what is for the most part pure trash. According to the Bill as now framed, only one copy is required at once and in all cases: two others may be demanded for the British Museum and the India Office Library, and I do not think that any author who may be honoured by such a demand will grudge giving a copy of his work to be preserved in the archives of the Empire. I am told that, in some parts of the country at all events, it is even now a rare thing for payment to be insisted on for a book required for the British Museum, and this is just the spirit I should have looked for in the better class of authors and publishers, who alone need be considered in this connection. They know that we do not exact even the first copy with any selfish object, but in order to preserve for future annalists a complete history of the development of the country as far as this finds expression in its literature. Any books that the Government of India may require for its own purposes it will continue to pay for as heretofore.

"It was suggested to the Committee by several authors whose opinions are entitled to weight that the duty of furnishing the required copies should be imposed on publishers rather than on printers. Theoretically this is the correct view, but it was explained in 1867 why the opposite practice was adopted, and the same reasons still hold good. The Hon'ble Mr. Hobhouse said that 'he was told that in this country it was in most cases extremely difficult to find the publisher of a book: ordinarily, a person who wished to publish a book went to a printer and got a certain number of copies printed; but how he published the book and disposed of these copies was not known.' And, again, 'if the pub-

lisher had to deliver the books, the Act must be a dead letter, because, in most cases, it was extremely difficult to find who the publisher was, whereas the name of the printer was very easily discoverable, as he was bound to register the press, and to put his name to every book that he printed.'

" It has been urged on the Committee that printers should be made to furnish quarterly lists of the books issued from their presses. In the absence of such returns, it was said, the Registrar would have no means of discovering when books were withheld, and it was pointed out with some force that it would no longer be to the interest of the publisher to obey the law. But we were averse to imposing any unnecessary burden on a hard-working body of men, and it seems unlikely that any book, worth preserving from any point of view, can escape the knowledge of a careful Registrar for any length of time. A printer who omits to comply with the requirements of the law will be subject to a tolerably severe penalty, and that ought to be enough. If it should prove insufficient, the printers will themselves be to blame, and there will then be no difficulty about imposing any additional liability which may seem necessary to make the law effective.

" Lastly, we were asked to amend Part IV of the Act, relating to copyright, by extending the definition of books so as to include pictures. Something of this kind is certainly desirable, but the Bill as published did not touch the question of copyright. If we had introduced a new provision of this nature, the Bill must have been republished, and could not have passed this session. Your Excellency is aware that the complete revision of the law of copyright is only waiting for the new law now engaging the attention of the Board of Trade, and that we have urged that the passing of this law should be expedited as much as possible."

The Motion was put and agreed to.

The Hon'ble RAO BAHÁDUR KRISHNAJI LAKSHMAN NULKAR moved that the following amendments be made in the Bill, as amended, namely:—

(*1*) that in section 4, amended section 9, the words "and free of expense to the Government" be omitted;

(*2*) that in clause (*a*) of the amended section 9, after the word "copy" the words "free of expense to the Government" be inserted;

(3) that to the amended section 10 the following words be added :—

"and, if the book is for sale to the public, shall, on the publication thereof, pay the publisher for the one or two extra copies which may have been received under section 9, clause (*b*), at the rate at which the book shall be *bonâ fide* sold to the public."

He said :—" In moving the adoption of the amendments, I beg to draw attention to the Statement of Objects and Reasons for this Bill, and to the explanation given by the Hon'ble Member in charge when he introduced the same. The main object is to require publishers to present copies without any payment, the reasons given being two :—(1) that the obligation to pay must be entirely rescinded as the only effectual means of preventing frauds shown to have been practised upon the public treasury under cover of the present law ; and (2) that the time has come to assimilate the Indian with the English law, which latter provides for presentation of a certain number of copies without payment. As to the necessity of accomplishing the first object, namely, the prevention of fraud, there can be no difference of opinion. Clause (*a*) of the amended section 9 of Act XXV of 1867 effectually secures this object, by requiring one copy to be furnished gratis, thereby enabling the Government Curator or Librarian to set his face against all worthless publications, by not calling for any more copies of them, and by confining his requisitions to works of real merit worthy to be preserved in public or official libraries. The necessity which the present law imposes upon Government to pay for these copies of works, of however worthless character, is thus obviated, and public money saved from being wasted upon literary sharpers and charlatans. But I must own that I fail to see how the time could be said to have arrived to require Indian authors or publishers to present more than one copy to Government without payment. During the twenty years since Act XXV of 1867 was passed, nothing is shown to have occurred to necessitate an alteration in that law, except the fraudulent practices brought to notice, which, as I have just pointed out, the amended section 9, clause (*a*), will make it simply impossible to carry on in the future. The profession of literature or authorship generally has not become more attractive or remunerative in India since 1867. It still wants very badly all the fostering care and countenance it then required at the hands of a paternal Government and a patriotic public. It would really be an irony of fate if persons publishing books deemed worthy of preservation by Government should be rendered liable to supply them gratis even after efficient means have been found to prevent fraud by others. The real misfortune would be that the degree of hardship upon

honest authors must increase on a sliding scale according to the merit of their works and the limit of demand for copies in the market; the more meritorious suffering more and more for the preventible and now effectually prevented misconduct of a few unscrupulous persons. As regards the question of assimilation with British laws on the subject, there seems to me to be no real necessity for it now any more than there was in 1867. But, granting for a moment the desirability of it, there seems, in reality, to be no assimilation of principle in the Bill as it now stands, because we are to continue of necessity as unable as ever to secure such reciprocity from British authors in endowing Indian public collections with free copies of their works as the English law requires Indian authors to do in favour of English collections. We have our public libraries, which are quite as valuable to India—for instance the Asiatic—as the English institutions now able to claim free copies from Indian authors are to England. Again, seeing that the one-sided English law must of necessity stand as it is, I entirely fail to see how the Bill, without the amendment I propose, can be said to cut down the existing liabilities, as stated in the introductory proceedings. Indeed, even with my proposed amendment, these present liabilities of Indian authors to supply free copies will, in fact, have been increased by one copy, because, anyhow, one additional free copy will have to be delivered as a means of preventing fraud in future, as to the absolute necessity of which we all agree. For these reasons I beg to commend the amendments to the acceptance of the Council as due in bare justice to Indian authors. With reference to the remarks of the Hon'ble Member in charge regarding the tone of criticism in the Native Press against this Bill, I have only to say that I was myself greatly pained to find so few of the public writers who have expressed with sufficient earnestness their indignation against the nefarious practices of book swindlers which were brought to light in these discussions. The Council can only abstain carefully from giving cause for just complaint against the measures it sanctions; and such is the sole object of the amendments I have proposed for adoption.

The Hon'ble MR. EVANS said:—"There are valuable works, like illustrated works on botany, the printing of which is exceedingly expensive, and, if we throw upon the authors of such works the liability to present more than one copy of such works, the tax may in exceptional cases be a heavy one. The proposed amendment therefore deserves consideration, if it can be carried out without frustrating the main objects of the Bill."

The Hon'ble MR. CROSTHWAITE said:—"I do not think the amendment proposed by my hon'ble friend should be accepted. The object of the Bill is to

put a stop to the device of putting fictitious and exorbitant prices on books in order to defraud the Government. If the two copies which are to be delivered for despatch to England are to be paid for, I doubt if this fraud will be put a stop to. On the other hand, the hardship of supplying at the most three copies free of expense is infinitesimal. It merely consists in this, that the cost of three copies has to be added to the cost of printing the book. This extra cost will probably, as a rule, amount to little more than the cost of the paper, and will not materially affect the price of the book."

The Hon'ble MR. HUTCHINS said:—"Notice of these amendments was not given within the time limited by the rules, but I wish, with Your Excellency's permission, to waive this technical objection; especially as the Hon'ble Mr. Nulkar was courteous enough to mention the matter to me personally at the earliest possible opportunity. But I cannot accept the amendments, and I wish to express my regret that the Hon'ble Member did not ask me to have him placed upon the Select Committee to which the Bill was committed: had he joined it, he would have known that I myself brought this very question before the Committee, and that it was fully considered.

"The result of these amendments, if carried, would be that the Trustees of the British Museum, as well as the Secretary of State, would have to pay for every book which they select from the catalogues transmitted to them. But the British Museum is already entitled to have a copy of every book free, and, though the main object of this Bill was to abolish compulsory payment as leading to unscrupulous practices, I had in view as a subsidiary object the expediency of putting this unquestionable right on a proper footing. Four other libraries, it is true, have a similar right under the Statute, but they have never attempted to exercise it, and I think that, when once this Bill becomes law, their right may be treated as altogether obsolete. The Museum, on the other hand, has constantly pressed its right, and only consented to pay for its copies as a provisional arrangement. Let us suppose that Mr. Nulkar's amendments are carried—our Act will then say the Museum must pay. But the Statute says that it shall not have to pay. We at once introduce a legislative conflict, and a very probable consequence would be that Her Majesty would be advised to disallow our Act.

"It seems to me that this objection is fatal, and I do not wish to say much more. The Hon'ble Mr. Crosthwaite has pointed out that the risk of cheating will only be diminished and not removed if the amendments are accepted, and he has explained what an infinitesimal burden it is which we are imposing on authors and publishers. I have myself on a former occasion shown that they

will only lose the cost price of the books, and have referred to the number of presentation copies which almost every author in this country distributes to those whom he regards as his friends and patrons. I really believe that the authors themselves, whose books are chosen (they are chosen in England and not by the local Registrar), will esteem it an honour and rejoice that their work will always be preserved at the cost and for the use of the empire at large. I do not see that the exemption of British authors from similar contributions to our Indian libraries has anything to do with the matter. The British Museum's library is the library of the empire, and not merely of England. It receives books from all the British colonies and dependencies without exception, and without any question of reciprocity. By giving up its own copy the Government of India has made a great concession, and I do not consider that we need go further. I am not sure, indeed, that we can make any further concession without the sanction of the Secretary of State."

The Hon'ble RAO BAHÁDUR KRISHNAJI LAKSHMAN NULKAR said:—"I wish to point out that the alleged conflict between the English and Indian laws on the subject of payment is not shown to have been practically felt since 1867, and there is no reason to anticipate its action in future. As to the question of reciprocity, I remain unconvinced, and believe that the contention is a very reasonable one."

The Motion was put and negatived.

The Hon'ble MR. HUTCHINS moved that for section 6 of the Bill as amended the following be substituted, namely:—

"6. In section 18 of the said Act, there shall be substituted, for the words and figure 'pursuant to section 9' the words, letter and figure 'pursuant to clause (*a*) of the first paragraph of section 9', and for the words 'copies thereof in manner aforesaid' the words, letter and figure 'copy thereof pursuant to clause (*a*) of the first paragraph of section 9'."

Amendment of section 18, Act XXV, 1867.

He said:—"This is a mere formal amendment. Section 6, as it now stands, provides for one formal alteration in section 18 of the Act which is rendered necessary by the number of copies to be delivered, in the first instance, being reduced from three to one, but I find that another similar alteration is required further on in the same section. The new section 6, as framed in my amendment, provides for both these alterations."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

PREVENTION OF CRUELTY TO ANIMALS BILL.

The Hon'ble MR. HUTCHINS also moved that the Report of the Select Committee on the Bill for the Prevention of Cruelty to Animals be taken into consideration. He said:—

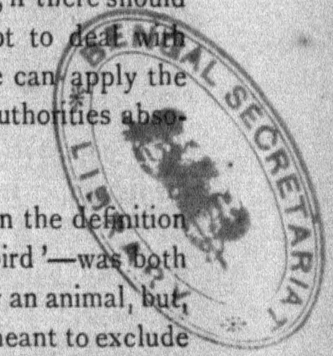
"Barely two months have passed since this Bill was introduced, and, as I fully explained its provisions on that occasion, I shall now confine myself to such observations as seem necessary to explain the Report of the Select Committee.

"It will be remembered that the Bill divides acts of cruelty into two categories—one comprising those which might be ignored unless committed in public, the other restricted to acts which, either from their nature or from their peculiar brutality, seem to justify intrusion under proper safeguards into private premises. I intimated that I would be prepared to consider suggestions for adding to the second category, but only one such suggestion has been received. His Honour the Lieutenant-Governor of Bengal considers that the practice called *phúká* should be definitely provided for, and in section 4 we have given effect to his recommendation. So far as I can learn, the practice is hardly known elsewhere than in or near Calcutta; it is, perhaps, even more disgusting than cruel, and the justification for placing it in the second category is not so much its special barbarity as that it is only carried on in private cowsheds.

"As regards the first category, the Council will recollect that I undertook to ask Local Governments whether we might give effect to section 3 everywhere or in all towns, and, if not, whether the condition as to publicity might not be dispensed with. The weight of authority is decidedly in favour of retaining both the condition of publicity and the discretionary power of the Local Administrations with regard to local extent. There is such variety in the circumstances and conditions of different parts of the country, and even of different towns, that it would be unsafe for us, sitting at this Board, to attempt to determine anything about the local application of the measure; and the opinions of most Local Governments seem to justify the apprehension which I expressed that they would be very chary about extending any measure relating to cruelty perpetrated in the seclusion of private houses. I trust that I carried the Council with me when I stated my own opinion last January that far more good is likely to result

from the prevention of open cruelty over a wide area than from any premature attempt to suppress private as well as public cruelty within more restricted limits.

"A slight difficulty arises in Bengal from the fact that the local Act, I of 1869, includes cruelty of all sorts, wherever committed, within those towns to which it has been or may be applied. We have, however, modified the first section of the Bill so as to enable Local Governments to extend either the whole or any of its provisions to any local area, and such extension will not necessarily involve the repeal or suspension of any local enactment. His Honour can, therefore, maintain his local Act side by side with any sections of the general measure which may seem applicable to the particular locality, and, if there should be towns where he does not at present think it safe to attempt to deal with cases of only ordinary cruelty committed in private houses, he can apply the general measure alone. Section 1, as amended, gives the local authorities absolute freedom in this respect.



"The most important alteration made by the Committee is in the definition of animal. We felt that the old definition—'animal includes a bird'—was both inadequate and likely to be misleading. A bird is unquestionably an animal, but, if we go out of our way to affirm this, it might be inferred that we meant to exclude a fish, a frog, a turtle, and so forth. I take it that the animals which we desire to protect are those which we keep around us, or choose to take out of their natural freedom, either for the sake of their services or for some other selfish reason. We have, therefore, defined animal for the purposes of the Act as 'any domestic or captured animal.' It seems to me that this will meet every case which we have in view—not only the domestic or tamed quardruped and bird of the Bengal Act, but the quadrumanous monkey, that untamed but captured rat which was dipped in oil and set alight, the turtle which in Assam is sometimes carried about for days on a rope passed through holes bored in its feet, and the netted snipe which throbs out the last remains of its miserable life on the pavement of the Calcutta market. On the other hand, we avoid interference with anything worthy of the noble name of sport: hunting, fishing, pig-sticking and the like would clearly come under the Act if the word 'animal' were left to be interpreted in its widest signification.

"With regard to the third section three objections have been taken which require some notice. It has been said that a place to which the public have access is included in the term 'street' and need not be repeated, but the definition of street only includes such places if they are *open*. The repetition is necessary in order to bring in markets, sheds, pandals, shamianas, and the like, used for public resort or entertainment. The words 'for sale' in clause (*c*) have been

demurred to, but they are necessary for the protection of veterinary surgeons; nay, without them the Society for the Prevention of Cruelty to Animals, which is one of the objectors, would itself be liable if it took charge of a maltreated beast out of pure compassion. The case of a gelding seemed to present some difficulty, but we considered that it would not be 'for sale' until it had recovered from the effects of the operation. The last part of this clause was also objected to, but we resolved to retain it. Just as there would be no thieves if there were no receivers, butchers would cease to skin goats alive or to cut out the tongues of turkeys if they could not safely dispose of the carcase. We may not be able to bring home the actual cruelty to a particular individual, but there should be no such difficulty in regard to possession of the carcase for sale; and by making that punishable we may hope to prevent the cruelty itself.

"It seems important to empower a Magistrate to prevent a beast which he finds unfit for work from being put to labour, and as far as possible to provide for its proper treatment. With this object we have borrowed from the Madras City Police Act a series of clauses relating to veterinary infirmaries. Perhaps these will not be of much present use outside the presidency-towns, but I hope, as time goes on, infirmaries may be constituted in other places. Personally I should be glad to find a Local Government selecting some well-regulated pound under an intelligent superintendent and declaring it an infirmary under the Act; but such an experiment would require careful supervision.

"We have struck out the special section relating to the apprehension of offenders, because we thought this was sufficiently covered by section 57 of the Code of Criminal Procedure. If the person is known to the police or gives them his name and address, there is no reason why he should be dragged through the streets in custody. If he refuses to give his name and address, or gives one that there is reason to believe to be false, any police-officer can arrest him under the ordinary law.

"By section 10 we have authorized any Magistrate and some other responsible officers to order the destruction of any animal if they consider that its condition requires that it should be put out of its pain without delay.

"Section 11 is a new and important provision. Some discussion arose as to whether the Muhammadan and other methods of slaughtering animals might not be regarded by some Magistrates as 'unnecessarily cruel' within the meaning of section 5. To obviate the possibility of misconstruction upon this point we have now provided that—

'Nothing in the Act shall render it an offence to kill any animal in a manner required by the religion, or religious rites and usages, of any race, sect, tribe or class.'

"The only other matter requiring notice is the slight alteration made with regard to penalties. The maximum punishment which can be inflicted under section 3 is now just half that provided by section 5, while the fine awardable under section 7 has been raised to Rs. 100, which is the limit prescribed in the corresponding section of the Bengal Act."

The Hon'ble MR. HALLIDAY said:—"I am in accord with the Hon'ble Member in charge of the Bill in the remarks he has just made regarding the provisions generally as arrived at in Select Committee. But there are one or two points on which I would ask to be permitted to say a few words. They relate to the Select Committee's determination to remove from the Bill the section which authorised police-officers to arrest without warrant persons offending against the Act. It has been represented that the very nature of the offences under the Bill seems to render it absolutely necessary that, to be effectual, action must be prompt, and the delay in obtaining a warrant will almost invariably be fatal to successful action. If I understand it rightly, the procedure adopted in the Bill will, so far as Calcutta is concerned, practically restrict the measure to cases occurring in public view, and, as has been pointed out to us by one authority, the power to apply by sworn information for a search-warrant would only meet some of the possible instances of cruelty which might be practised on private premises; indeed, the evidence of, I may say, most cases coming under the Bill would probably have disappeared before the necessary formalities had been complied with. The Hon'ble Member in charge of the Bill has said that provision relating to the apprehension of offenders was sufficiently covered by section 57 of the Code of Criminal Procedure, but it will be found that section 57 is not among the sections of that Code extended to the towns of Calcutta and Bombay by various Acts. It would seem that in the town of Madras under their Local Police Act the law reaches any case of cruelty, and the general power given under that Act enables any police-officer in whose view an offence under the Act is committed to take cognizance thereof at once, if immediate action be necessary. Thus, an important provision which is made applicable in Madras is not extended to either Bombay or Calcutta by this Bill. I was therefore of opinion that some provision should have appeared in the present legislation, not only for conferring powers on selected police-officers to take cognizance at once if immediate action be necessary, but also to have conceded to specially selected police-officers, of a rank to be determined by the Local Government, the right of entry to search; for, as it is with regard to section 57 of the Criminal Procedure Code which I have mentioned, so with regard to the provisions of that Code relating to searches, the sections relating thereto have not been extended to Calcutta. I think myself that in this presidency-town the right of entry might be conceded to specially selected police-officers, safeguarded by certain conditions

as to the rank of the officers, and as to their recording before entering private premises the information on which they are taking action. In regard, then, to the provisions in the Bill which go beyond those of the Bengal local Acts, I and III of 1869, the powers under section 57, Criminal Procedure Code (which is the only section under which action can be taken in respect of offences punishable by the Bill), are of no use in the presidency-towns of Calcutta and Bombay. For these reasons I should have liked to have seen such provisions as I have mentioned included in this Bill; but, as I understand that it is still left open to the Local Governments to embody in their local Acts those provisions in this Bill which relate to offences and punishments that are not to be found in the local Acts, I do not now press for any enlargement in the direction I have indicated of the powers sought to be conferred by this Bill, which is to have wider application. I have no doubt the Bengal Government will not now allow its presidency-town to be in this respect in a worse position than the rest of the province to which this Act, when it comes into force, may be extended."

The Hon'ble MUHAMMAD ALI KHAN said:—

"The Bill on the table is on the lines of the existing enactments on the subject of preventing cruelty to animals in different provinces; but its application is general and it is more comprehensive. Some new provisions have been introduced in the Bill for preventing animals being killed in a most brutal manner. Of late it has been discovered that there exists a practice among the butchers of flaying animals alive for getting better prices for the skin. Within a very short time I have read in the Calcutta papers of two or three cases of such wanton cruelty coming up before the Police Court. But no adequate punishment has been provided for such revolting practices in the existing enactment. The present Bill prescribes exemplary punishment for such inhuman acts.

"It is the duty of the Legislature to take proper measures for the protection of dumb animals from unnecessary cruelty, which they suffer patiently and helplessly at the hands of unfeeling persons, and I think the provisions of this Bill are sufficient for the purpose. The Bill has undergone some necessary alterations in the Select Committee, and as it is revised, if passed into law, will, I dare say, command general approval."

The Hon'ble RÁJÁ DURGA CHARN LAHA said:—"I was a member of the Select Committee which considered the Bill. It struck me at first that the inquisitorial power therein given might lead to some hardship and oppression. Since, however, the operation of the law or any portion of it is left to the discretion of the Local Governments,—which I am sure will never think of extending the provisions of the Bill anywhere beyond the precincts of presidency-towns, centres

of trade and commerce and other populous towns where such offences as are provided for in the Bill are largely committed,—I do not think any great harm will be done by the measure. Besides, unless some such provision is made, it will be utterly impossible to reach the offenders when the offences are committed in private houses, and a door will be left open to evade the law.

"It is only to be hoped that the provisions of the law will be so administered that they might not be turned into an engine of oppression in the hands of over-zealous police-officials."

The Hon'ble MR. HUTCHINS said:—"With reference to what has been said by the Hon'ble Mr. Hallıday, I would remind the Council that this is a general enactment, designed on lines which, I hope, may be found applicable to the country generally, and specially intended, as I pointed out when I introduced it, for those provinces which have no local Legislature. If we had been framing a measure for the presidency-towns or limited to other centres of intelligence, we might possibly have gone further than we have done in the direction indicated by my hon'ble friend. But this right of entry is another of those questions upon which, even in Calcutta, the views of the community are widely divergent. Many excellent people, who earnestly desire to protect the brute creation from cruelty, are extremely opposed to anything like intrusion upon private premises even under a Magistrate's warrant. The Commissioner of Police thinks we ought not to require a warrant at all. It seems to me that we have adopted a safe middle course, and that no other course would be suitable to a general enactment. We have provided in section 8 that—

'(*1*) If a Magistrate of the first class, Sub-divisional Magistrate; Commissioner of Police or District Superintendent of Police, upon information in writing and after such inquiry as he thinks necessary, has reason to believe that an offence against section 4, section 5 or section 6 is being or is about to be or has been committed in any place, he may either himself enter and search or by his warrant authorize any police-officer above the rank of a constable to enter and search the place.

'(*2*) The provisions of the Code of Criminal Procedure, 1882, relating to searches under that Code shall, so far as those provisions can be made applicable, apply to a search under sub-section (*1*).'

"If this section is extended to Calcutta, all the provisions of the Code relating to searches will necessarily be extended at the same time; and, as for section 57 of the Code, I am not aware of any reason why it should not be brought into operation in a presidency-town: at all events even now the police

must have the same powers of arrest in regard to offences relating to cruelty to animals as they have with regard to other non-cognizable offences, and I do not see any particular reason why they should be given larger powers.

"I am not disposed to take special precautions against a mere casual act. Where there is reason to suspect anything like habitual cruelty, a warrant can be obtained without difficulty and almost in as short a time as my hon'ble friend's selected officer would take to record his information in writing. It seems to me—and, if I rightly apprehend my hon'ble friend, he does not dissent from this view—that any supplementary legislation specially required for the presidency-towns should be undertaken by the local Councils and not embodied in our general Act."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

ACTS I OF 1859, VII OF 1880 AND V OF 1883 AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved that the presentation of the Report of the Select Committee on the Bill to amend Acts I of 1859 (*Merchant Seamen*), VII of 1880 and V of 1883 (*Indian Merchant Shipping*) be postponed. He said:—"There has not been sufficient time to receive and consider the opinions of the Local Governments, and postponement is, therefore, inevitable."

The Motion was put and agreed to.

INDIAN TARIFF ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR also moved for leave to introduce a Bill to amend the Indian Tariff Act, 1882. He said:—

"The object of this Bill is to raise the rate of duty on imported spirit from Rs. 5 to Rs. 6 a gallon of the strength of London proof. Some time ago the Secretary of State for India requested the Government of India to consider the expediency of enhancing the import-duty on spirits. It was pointed

out that in recent years the rates of duty on spirit manufactured in India had been increased in a higher proportion than the duty on imported spirit: while the duty on the latter had been raised from Rs. 4 a gallon, the amount at which it was fixed in 1875, to only Rs. 5 a gallon, with a proportionate reduction for strength below London proof, the enhancement of the rates of duty on country spirits had been in many places very considerable. It was said that 'in order to restore the ratio that used to exist between the duty on imported spirit and the duty on Indian spirits, the rate of duty would have to be increased considerably.' It was also urged 'that an enhancement of the duties on imported spirits would be an important step towards increasing the price of, and the revenue from, strong drink, and also towards restricting the consumption. It would also, moreover, pave the way for further increases of the still-head duties in towns and populous tracts.' The Government of India consulted the Local Governments and Administrations on the question. With the exception of Assam and the North-Western Provinces and Oudh, the authorities consulted have been generally in favour of an increase. Both the Chief Commissioner of Assam and the Lieutenant-Governor of the North-Western Provinces consider that there is no such competition between imported and country spirit as to call for an increase in the import-duty. But in Assam the circumstances of the country have not as yet permitted the imposition of rates of duty on country spirit levied according to quantity and strength; while in the North-Western Provinces and Oudh the rate of duty is exceptionally low, though the Local Government is now considering the propriety of raising the rate. These facts sufficiently account for the opinions that have been received from Assam and the North-Western Provinces. All other Governments are in favour of an increase. The following is an extract from the report of the Madras Board of Revenue, which is fully endorsed by the Government of Madras:—

'The incidence of duty on country spirit, that is, the excise-duty *plus* the vend rents, in almost every large town in the presidency and in many rural tracts, is already greater than the present tariff rate, Rs. 3-8 at 30° under proof; and it will be practically impossible before long to raise the rate of excise-duty any higher. . . . . In the interests, therefore, of the local distilling trade, in the hope of keeping cheap and inferior European spirits out of the country, and in the interests of temperance, in order that there may be scope for raising the excise-duty and thereby decreasing consumption, the Board recommend an increase in the tariff rate of duty.'

"The Government of Bengal states that low class European spirit competes considerably with country liquor, and recommends an increase in the tariff rate chiefly with reference to that inferior class of imported spirit, on the ground that

'it is, if not absolutely deleterious, certainly less wholesome than either country spirit or country rum.' It is on the two considerations above stated that the Government of India has decided that it is desirable to increase the rate of duty as proposed in this Bill. The first of them is a consequence of the excise policy, which has been followed by the Government of India, of restricting the consumption of spirits as much as possible by the imposition of high rates of duty. This has been carried so far that any further progress in the same direction is, in some provinces, difficult or impossible without increasing the tariff rate on imported spirits. It is also obviously a sound policy to increase the rate of duty on specially injurious kinds of spirit. In regard to the amount of the increase of duty the Local Governments differed in their proposals; rates varying from Rs. 6 to Rs. 7 per gallon were suggested. The Government of India has decided that an increase to Rs. 6 will be sufficient for the present.

"An increase in the rate of duty on perfumed spirit from Rs. 7-8 to Rs. 8 follows necessarily on the increase in the rate for ordinary spirit. The rate of duty on spirit in England is 10*s.* 4*d.* a gallon of the strength of London proof. This is considerably more than the rate of Rs. 6 a gallon which it is now proposed to place on spirit imported into this country, and the classes which consume imported spirit in this country are at least as well able to pay a high rate of duty as the classes which consume the same quality of spirit in England."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also introduced the Bill.

The Hon'ble SIR DAVID BARBOUR also applied to His Excellency the President to suspend the Rules for the Conduct of Business. He said:—

"My object in so applying is that I may be able to move that the Bill be taken into consideration at once and passed to-day if the Council should be of opinion that it ought to be passed. This is a course which can only be justified in a case of urgency, but I submit that the present case is one of urgency. If any delay takes place, large quantities of spirit will be taken out of bond, or imported, and particular individuals will be able to make an undue profit at the cost of the public and of the public revenues. There need be no hesitation in dealing with the matter at once on the ground that persons who have made contracts for the sale of liquor at a certain price, but have not yet

paid the duty, will suffer hardship; because in an Act passed last year, VIII of 1889, provision was made to enable the seller in such case to add the additional duty to the contract price."

His Excellency THE PRESIDENT said:—"The course which the Hon'ble Sir David Barbour asks me to adopt is one which has been taken before on similar occasions when a clear case of urgency arose. From what has fallen from the Hon'ble Member I have no hesitation in saying that a sufficient case has been made out, and I therefore suspend the Rules."

The Hon'ble SIR DAVID BARBOUR moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR then moved that the Bill be passed.

The Motion was put and agreed to.

EXCISE ACT, 1881, AND BENGAL EXCISE ACT, 1878, AMENDMENT BILL.

The Hon'ble Sir DAVID BARBOUR also moved that the Bill to amend the Excise Act, 1881, and the Bengal Excise Act, 1878, be taken into consideration. He said:—

"I may say at once that no objection to this Bill has been raised by anybody either in respect of the principle of the Bill, which aims at the taxation of Indian-brewed beer, or in respect of the amount of duty to be imposed. Certain suggestions regarding it have been received from persons who are interested in it in their capacity as brewers. These suggestions can be satisfactorily dealt with by executive order, but in respect of one of them legislation is desirable. I refer to the proposal to allow a drawback of the duty when Indian-brewed beer is exported to foreign countries. This is obviously a reasonable suggestion, and I propose to slightly amend the Bill so as to place Indian beer on the same footing in this respect as Indian spirits."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill, with the amendment already referred to, be passed. He said :—

"Although the present Bill does not materially affect the finances, it will, I think, be convenient that I should now give a brief sketch of the general financial position. The usual Financial Statement is published to-day, and full details will be found in it. When I speak of pounds it will be understood that I mean tens of rupees.

"The Accounts of the year 1888-89 have now been finally closed. They show a surplus of Rx. 37,000.

"The Budget Estimate of that year, framed in March, 1888, showed a deficit of Rx. 698,000, and it is satisfactory that the Accounts have closed with a surplus, as it shows that we are beginning to see our way out of our recent financial difficulties.

"The Estimate of the current year, as framed in March last, showed a surplus of Rx. 106,300.

"The Revised Estimate, if compiled in the same way as the Budget Estimate, would now show a surplus of Rx. 2,733,200, and the Estimate of the coming year would show a surplus of Rx. 304,900. Certain special arrangements are proposed which will affect the surplus of 1889-90 and of 1890-91, but it will be convenient to keep these arrangements out of sight until it has been explained how it happens that the Budget surplus of the current year has grown into Rx. 2,733,200, while the Estimate of the year 1890-91, if compiled on the same basis, would show a surplus of only Rx. 304,900.

"In the first place, I propose to offer a few remarks on the subject of Exchange, so as to clear that question out of the way at the beginning. I have seen it stated that the improvement in the current year is largely or mainly due to the rise in the rate of Exchange. This is not the case. The rate of Exchange taken in the Budget Estimate was 1*s.* 4·38*d.*—one rupee. Although the rate of Exchange is now considerably higher than that rate, it was lower during a large portion of the year, and the average rate of Exchange for the whole year 1889-90 is now taken at only 1*s.* 4·552*d.* per rupee. The rise is therefore only slightly greater than one-sixth of a penny per rupee. For present purposes it will be sufficient to put the improvement on this account at Rx. 200,000 in round numbers. In the explanation I am about to give I shall distribute this improvement of Rx. 200,000 among the several heads affected.

"Although the improvement in the position has not been mainly due to the rise in Exchange, the cessation of the long-continued fall in the gold value of the rupee has been a most welcome relief to the finances. From 1873 to 1890 there have only been two other years in which the actual rate of Exchange exceeded or was equal to the rate taken in the Budget, and the average yearly fall from 1873-74 to 1889-90 has been ·36 of a penny per rupee or more than twice the rise in the current year.

"Although the cessation of the hitherto continuous fall in the value of the rupee measured in gold has greatly improved the financial position for the time being, the uncertainty as to the future relations of the precious metals constitutes a very serious danger, and one which it would be worth our while to make great sacrifices to escape. The future of the Currency question appears to rest at the present time in the hands of the United States of America.

"Coming now to the ordinary Revenue and Expenditure of the year, I may say at once that the chief improvement in the current year appears under the head of Opium. There is an increase of Rx. 286,400 in Opium Revenue; there is a decrease of Rx. 708,800 in Opium Expenditure. The total improvement under Opium is consequently Rx. 995,200. In the Budget Estimate the price of Bengal Opium was taken at R1,070 a chest. It has proved to be R1,136; this accounts for the improvement in Opium Revenue, an improvement which I regret to say is not likely to be maintained during the coming year, as the price of Bengal opium at this month's sale was only R1,040 a chest, though the market-price has since risen.

"The decrease in Expenditure is due to a poor crop of Bengal opium. The total crop of Bengal opium is purchased by Government at a fixed price per seer. A good crop means heavy expenditure in the purchase of opium; a poor crop means a saving in expenditure. As it happens, the bad crop of the year has not done us material injury, because the reserve of opium was very high and is still sufficient. The improvement under Opium in the current year must be considered as merely temporary. In a series of years we shall no doubt get average crops, and the present selling price of opium is much below the average price of the year about to close.

"In addition to the improvement under Opium, there has been, during the current year, a very satisfactory increase of revenue under what is known as

the other Principal Heads of Revenue, which include Land-revenue, Salt, Excise, Stamps, Provincial Rates, Customs, Assessed Taxes, Forests, Registration, and Tributes from Native States. This increase is partly Imperial, partly Provincial, partly Local.

"The large improvement in Revenue which is shown under the Principal Heads of Civil Revenue (excluding Opium) is of a permanent nature, or, in other words, we can safely reckon on obtaining the same increase in future years. If there is any falling-off under some heads, it will be balanced by increase under other heads. This improvement amounts to Rx. 766,500 on Imperial account, and is mainly due to an increase of Rx. 298,400 under Land-revenue, of Rx. 149,600 under Salt, of Rx. 79,100 under Excise, of Rx. 31,500 under Stamps, of Rx. 69,600 under Customs, and of Rx. 112,700 under Forests.

"The improvement under Opium and the growth of Revenue under the other Principal Heads accounts in all for an improvement of Rx. 1,761,700 in 1889-90, of which more than 40 per cent. is a permanent increase of the public revenue, the rest being temporary.

"On Special Defences there has been a reduction of expenditure amounting to Rx. 344,500, which merely represents postponement of charges which will be incurred hereafter, and under Interest not charged against Railways and Canals there has been a net improvement of Rx. 230,900. The improvement in the net Interest charge is due to the high rate of interest obtained by the Secretary of State on that portion of his cash balance which he was able to invest, to the saving from the issue of a loan of 2 crores very nearly at par last year as compared with the estimated charge for the issue of a loan of 2½ crores at a discount, to the rise in Exchange, and to other causes.

"There has also been a net improvement of Rx. 118,600 under Army, notwithstanding the expenditure on the Chin-Lushai Expedition, and of Rx. 73,900 in the Railway Account. Under all other heads there is a net improvement of Rx. 97,300. The total net improvement of the year is Rx. 2,626,900.

"The explanation of the large surplus in 1889-90 may then be briefly stated as follows: in the current year Opium has given a net improvement of Rx. 995,200; other Principal Heads of Revenue have given an improvement of Rx. 766,500; Special Defences show a reduction of expenditure amounting to

Rx. 344,500; Interest gives an improvement of Rx. 230,900. All other heads give a further net improvement of Rx. 289,800. The total net improvement of the year is Rx. 2,626,900, and, adding the Budget surplus of Rx. 106,300, the surplus with which the year is expected to close is estimated at Rx. 2,733,200. Of this net improvement of Rx. 2,626,900, about Rx. 200,000 has been caused by the rise in Exchange, which has favourably affected Revenue and Expenditure under various heads. As the Accounts almost invariably show a better result than the Revised Estimate, I have little doubt that this surplus will be found to have been exceeded when the accounts of the year are finally closed.

"I can now explain very briefly why the surplus of 1890-91 is so small as compared with that of 1889-90. In the first place, we lose the temporary increase from Opium to which I have just referred; the loss on this account is actually Rx. 992,400; in the next place, we receive in 1889-90 a special contribution from Local Governments of Rx. 490,000; there is no such contribution in 1890-91; in the third place, the Budget Estimate of net Military Expenditure in 1890-91 shows an increase over the Revised Estimate of no less than Rx. 611,000. On these three accounts—Opium, Contribution from Local Governments and Military Expenditure—the financial position of 1890-91 is worse than that of 1889-90 by no less than Rx. 2,093,400. Adding to this a net falling-off under Interest of Rx. 113,400 and an increase of expenditure amounting to Rx. 133,900 under Special Defences, we get a falling-off of Rx. 2,340,700. The surplus of 1889-90 being Rx. 2,733,200, this deterioration of Rx. 2,340,700 would of itself be sufficient to cause the large surplus of 1889-90 to be replaced by a surplus of Rx. 392,500. It so happens that under all other heads there is a net deterioration of Rx. 87,600, which brings the surplus down to Rx. 304,900.

"The increased expenditure on the Army in 1890-91 is due to the purchase of Magazine rifles and ammunition for them, to the cost of 21 more batteries of 12-pr. breech-loading guns, to the purchase of machinery for making ammunition for the guns in India, and to the provision of Rx. 200,000 for the Chin-Lushai expedition and of Rx. 60,000 to complete the arrangements for prompt mobilisation of the 1st Army Corps. The total cost on the accounts I have stated is no less than Rx. 1,361,300.

"Summing up the whole case, and putting aside all matters of minor importance, it may be said that in 1889-90 we have a large surplus owing to a temporary improvement under Opium, to a general growth of revenue which will be maintained and will affect future years, to short expenditure on Special

Defences, and in connection with the Army, to reduction in the Interest charge, to improvements in the Railway Revenue Account, and to a rise in the rate of Exchange. In 1890-91 we have only a moderate surplus, because we lose the temporary improvement under Opium, because we no longer receive the special contribution of Rx. 490,000 from Local Governments, because there are special demands in connection with the equipment of the Army, and because there is an increase in the net Interest charge, as well as an increase in the expenditure on Special Defences.

"It will be obvious from what I have just said that the estimates for next year would have shown a very considerable surplus but for the heavy and special demands that have fallen on them in connection with the Army. These special demands come to no less than Rx. 1,361,300, exclusive of a provision of Rx. 892,300 on account of Special Defences. It is reasonably certain that there will be special demands of a somewhat similar nature in 1891-92, but it is not probable that they will be so heavy as in the coming year. Nor are the finances of 1891-92 exposed to any special dangers, so far as can now be seen, other than those vicissitudes which must always attend Indian finance. On the other hand, we may look forward during 1890-91 to the normal growth of revenue. There are, therefore, strong grounds for holding that in 1891-92 we shall at least find ourselves in a position of comparative ease, with a surplus in hand, moderate in amount, but sufficient to allow of some improvement in financial conditions.

"In view of this comparatively favourable prospect the Government of India has decided to anticipate the future to some extent and to take immediate steps for the partial restoration of the Famine Grant. This can be done by measures which I shall now explain; but in the first place I propose to refer briefly to the nature of the Famine Grant and its history.

"The policy of strengthening the finances in connection with Famine was originally adopted in order to protect the country against the financial effects of Famine. It was calculated that Famine would cost, either directly in expenditure intended to relieve distress, or indirectly through loss of revenue, no less than Rx 15,000,000 every ten years, and it was therefore decided that in ordinary years the Government should take measures for providing a surplus of Rx. 1,500,000. This surplus would be used either to reduce debt directly by buying up and cancelling public obligations, or to indirectly reduce debt by diminishing borrowing.

"It has been sometimes assumed that the object of this policy was the provision of funds for the actual relief in time of famine of persons who were in distress, and it was argued that when the money so provided was no longer available the people could not be relieved in case of famine, and must perish. This was not the case. Whether a surplus exists or not, the Government recognises its obligations in case of famine, and the actual amount of cash in the treasury is regulated from time to time by considerations which are quite independent of the absorption or maintenance of the Famine Grant. The objects which the Famine Grant is intended to secure are purely financial. 'So long as it is maintained we have in ordinary years a surplus of Rx. 1,500,000, and this surplus of Rx. 1,500,000 in ordinary years will, it may reasonably be hoped, balance the deficits which must occur from time to time in a country of which the financial conditions are so uncertain.

"The Famine surplus was intended, in the first instance, to operate in the direction of reducing debt. At a subsequent period it was decided to use one-half of it for the construction of Railways and Canals which would protect the country from famine. I think this was, under the circumstances of the case, a wise and prudent measure, but it was a slight departure from the objects of the original policy. These were, as I have said, purely financial. In so far as the Protective Canals and Railways constructed from the Famine Grant returned a fair profit, or lessened the cost of relieving famine, in so far the original purpose of strengthening the finances was maintained. In so far as they failed to return this profit the original purpose was departed from. On the other hand, it was an important consideration that the construction of these Railways and Canals might have the effect of mitigating famine to the extent of preserving human life, which would otherwise have been lost.

"The Government of India expressed their willingness in past years to go further in the direction of using the Famine Grant for the construction of Protective Works than was actually done, and would have appropriated it to meet any loss that might arise on Protective Railways constructed by means of borrowed money; in 1886 the Secretary of State did actually agree that the interest charge on the Indian Midland and the Bengal-Nagpur Railways should be a charge against the Famine Grant. These Railways were held to be of importance for the protection of the country against famine, and it was only on the understanding I have stated that their construction was sanctioned.

This matter has somewhat fallen out of sight in recent years, because, shortly after the decision of the Secretary of State was given, the financial difficulties of the Government became so great that the Famine Grant was practically abolished for the time, and there was no special reason for calling attention to the fact that a portion of it went to meet the loss on the Indian Midland and Bengal-Nagpur Railways.

"Although the Famine Grant was practically suspended for the time, the Government of India and the Secretary of State have always attached importance to its maintenance. If the Indian finances show bare equilibrium in normal years, the deficits of bad years can only be met by borrowing; such borrowing must in time lead to a large growth of debt incurred for non-productive purposes. The provision of what is really a yearly surplus of Rx. 1,500,000 is the most effective means of preventing the growth of debt of this character.

"The manner in which it is proposed to partially restore the Famine Grant at once will now be explained.

We receive this year a special contribution of Rx. 490,000 from Local Governments. This transaction is carried out by debiting the amount to the balances of Local Governments and crediting it to the Government of India. It is practically the same thing to all parties whether the transaction is carried out this month or next month. The credit is therefore postponed till next month, and the effect on the finances is to diminish our surplus of this year by Rx. 490,000 and to increase that of next year by an equal amount.

"After this change is made there will be a surplus of Rx. 2,243,200 in 1889-90 and of Rx. 794,900 in 1890-91. In both these years a certain amount of expenditure is already shown under the Grant for Famine Relief and Insurance, partly on account of the construction of Protective Canals and partly for relief of distress. Of the surplus of 1889-90, a sum of Rx. 433,500 will be utilised to raise the total Famine Grant to Rx. 600,000; of the surplus of 1890-91, a sum of Rx. 524,500 will be utilised to raise the Famine Grant of that year to a like amount. The surplus of the Revised Estimate will then standat Rx. 1,809,700, and the surplus of the Budget Estimate of 1890-91 will be Rx. 270,400.

"The amount provided to meet the net charge on account of the Indian Midland Railway and the Bengal-Nagpur Railway is Rx. 458,100 in 1889-90, and Rx. 432,800 in 1890-91.

"The final result then of the policy which the Government of India has decided to adopt is that in the current year we have provided in all Rx. 1,058,100 (Rx. 600,000 *plus* Rx. 458,100) on account of the Famine Grant, that in the coming year we have provided Rx. 1,032,800 (Rx. 600,000 *plus* Rx. 432,800), on the same account, and that we have nevertheless a surplus of Rx. 1,809,700 in 1889-90 and of Rx. 270,400 in 1890-91; these surpluses are available for the reduction of borrowing and will in practice be used for that purpose.

"The sums provided under the Grant for Famine Relief and Insurance *plus* the sums that go to meet the net charge on the Indian Midland and Bengal-Nagpur Railways, together with the surpluses of the current and coming years, amount to Rx. 4,171,000 in the aggregate; so that, practically, the Famine Grant has been more than restored for the years 1889-90 and 1890-91, as we have in the two years a sum of Rx. 4,171,000 available for the purposes for which the policy of the yearly grant of Rx. 1,500,000 for Famine Relief and Insurance was adopted.

"The general effect on our borrowing of the surpluses of 1889-90 and 1890-91, which amount to Rx. 2,080,100, and of the sums now set aside for Reduction of Debt, amounting to Rx. 958,000, making Rx. 3,038,100 in all, is shown by the following facts.

"The Government of India has arranged to spend in 1890-91 the sum of Rx. 3,750,000 on the construction of Railways and Canals, not chargeable against Revenue.

"Under ordinary circumstances we must have borrowed largely in the open market on this account. As our balances now stand we expect to be able to find this sum of Rx. 3,750,000 in addition to Rx. 907,000, on account of loans to be made by Government for local purposes, without raising a loan this year. This result is mainly due to the existence of the sum of Rx. 3,038,100 to which I have just referred, which enables us to avoid borrowing a like amount and in this way effects a permanent saving of about Rx. 120,000 yearly in interest. To this extent the finances of the country have been strengthened.

"A further advantage of the improvement that has occurred in the financial position is that it is unnecessary at the present time to revise the financial relations between the Imperial Government and the Provincial Governments. The present contracts can be left to run their course, and the relations between

the Local and Imperial Governments can be settled in 1892 and included in the contracts that will then be made.

"In the Statement of last year I made the following remarks on the financial position of the Government of India:—'My deliberate conclusion is, that while there is every need for economy and for husbanding our revenue, there is no ground for despondent or pessimist views. Unless some unforeseen disaster occurs, there is every reason to hope that the lapse of two or three years will show a decided improvement in the financial position of the Government of India. It is true that the surplus which we have been able to show in the Estimates is only Rx. 106,300, but the Estimates have been framed with great moderation, and if the Indian revenues continue to exhibit their usual elasticity and no unforeseen disaster occurs, I anticipate that the Financial Statement of 1890-91 will show decided improvement.' These remarks were not universally accepted: those who had previously taken a pessimist view of Indian finance were not prepared to admit that there were signs of improvement. The progress made in the current year, however, confirms the soundness of the opinion I expressed in March last. Only twelve months have elapsed since I ventured to make that prophecy, and the signs of improvement are unmistakable.

"In 1889-90 and 1890-91 we have partially restored the grant for Famine Relief and Insurance; we have a large surplus in 1889-90, and a moderate surplus in 1890-91 after making provision for altogether special demands for the equipment of the Army. Although the coming year is unlikely to prove so prosperous from a financial point of view as 1889-90, I look forward, in the absence of unforeseen disaster, to still further improvement in 1891-92.

"But my remarks of last year regarding the signs of improvement in the finances had another effect which I did not anticipate at the time. It was assumed in some quarters that I was of opinion that the financial position was in all respects thoroughly satisfactory, and that the Government of India might at once with safety enter upon schemes which their promoters held would have the best effects on the country, but which certainly involved very heavy expenditure at the outset. Nothing was further from my intention than to convey any such impression, or to give the slightest encouragement to those who wish to mortgage the future of our finances for the sake of entering upon hazardous speculations.

"I said last year that there were signs of improvement. I say now that my forecast has been borne out by the facts of the year about to close, and that there

are good grounds for expecting further improvement in the coming year, but I fully recognise that we have difficulties of no slight magnitude still to meet, that the finances are exposed to many dangers, and that unforeseen disaster might for a time upset our calculations. There is every need for caution and for economy, and I should greatly regret if anything I now say, or have said in the past, conveyed the impression that the Government of India is in a position to embark on a policy of adventure of any description."

The Hon'ble MR. EVANS said:—"I have to suggest to the Council to consider whether there is any particular urgency in regard to the passing of this Bill. There may be difficulty in discussing the Budget Statement if the Bill is passed now."

His Excellency THE PRESIDENT said:—"It will probably be convenient to adjourn at this stage till this day week and resume the discussion on it when the Council meets again."

The Council adjourned to Friday, the 28th March, 1890.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 27th March, 1890.

Government of India Central Printing Office.—No 96 L. D.—28-3-90.—308.—C. H. L.

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 28th March, 1890.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.
The Hon'ble A. R. Scoble, Q.C., C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Syud Ameer Hossein, C.I.E.
The Hon'ble Rájá Durga Charn Laha, C.I.E.
The Hon'ble G. H. P. Evans.
The Hon'ble Maung Ôn, C.I.E., A.T.M.
The Hon'ble Muhammad Ali Khan.
The Hon'ble R. J. Crosthwaite.
The Hon'ble Sir Alexander Wilson, Kt.
The Hon'ble F. M. Halliday.
The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.

EXCISE (MALT LIQUORS) BILL.

The Motion before the Council was that the Bill to amend the Excise Act, 1881, and the Bengal Excise Act, 1878, be passed with the following section added thereto, namely:—

"*Drawback of Excise-duty on Export of Malt Liquor.*

"9. The provisions of section 150 of the Sea Customs Act, 1878, with respect to the allowance of a drawback of excise-duty paid on spirit manufactured in British India and exported to a foreign port, and with respect to the regulation of the drawback by the quantity of such spirit, shall apply also, so far as they can be made applicable, to fermented liquor made in British India from malt and so exported and to the drawback of the excise-duty paid on such liquor."

Application of provisions of section 150, Act VIII, 1878, to malt liquor.

The Hon'ble RAO BAHÁDUR KRISHNAJI LAKSHMAN NULKAR said:—"My Lord,—Owing to the shortness of the interval between the presentation and the date fixed for discussion of the Financial Statement, I am unable to submit anything like a full review of that document. I hope that in future a longer interval and the concession of the privilege of interpellation may place us in a better position for a more satisfactory treatment of the important subject of Indian finance. On the present occasion I intend to content myself by submitting for consideration such observations as a cursory study of the Statement suggest themselves. To begin with the Home Charges, one is struck with the meagreness of information given in the accounts, which show nothing beyond two vague entries of 'Bills drawn by the Secretary of State,' and paid. An Indian Budget must be considered incomplete without full and detailed information of the Home Charges, together with the bills preferred and paid between the War Office and the India Office, together with claims on account of charges for troops lent by either country to the other for active service. I would earnestly press for adoption in future this improved mode of preparing the annual Budget in this country, the necessary materials being duly obtained from the Secretary of State.

"Closely connected with the subject of Home Charges is the question of loss by exchange on payments which have to be made in England in sterling. The present uncertainty of conditions and rules of local recruitment of the Indian subordinate services has given rise to extraordinary claims on behalf of a class of members of those services founded on race distinction to have their rupee pensions paid in England in sterling at a rate of exchange more favourable than the market-rate of the day. Distinct promises and conditions of service made at the time of recruitment must, of course, be faithfully fulfilled; but it is difficult to understand how foreign British-born subjects, after claiming equality of treatment and eligibility for employment in India along with the natives, can, after retirement, justly advance a claim to have their pensions, originally fixed in rupees, paid in England in sterling at favourable rates of exchange simply on the ground that they are foreigners by race and prefer to live in Europe. It is a peculiar misfortune of India that these questions of race distinction should be allowed to crop up with almost the regularity of periodicity, even half a century after all such distinctions had been abolished by Act of Parliament. The Act of 1870, which tried to bring into existence and bolster up a fiction called the Statutory Civil Service of India, is responsible for unsettling the minds of the people by legalizing a race distinction in a manner which satisfied nobody, which practically created rather an arbitrary inter-race distinction, and which introduced into the exercise of patronage the elements of birth and race partiality which soon became a public scandal. Let

me not be misunderstood. I have nothing to say personally against the body of public servants called the Statutory Civil Service. I have no doubt that it consists of members as good and worthy as it was possible to secure under the circumstances. But it has to be remembered that none of them, however able or talented, can possibly escape the taint which must inevitably attach to a faulty system of recruitment based on the wrong principle of the service for the men, and not men for the service. The Public Service Commission dealt with this Statutory Service exhaustively and exposed its mischievous effects on the public as well as personal interests concerned. The Commission recommended its abolition and advised a well-marked division of the public services of India into two parts—one to be exclusively recruited for in England, and the other in India; the distinction of race, creed or colour being rigidly discarded from both. The interests of the indigenous races in the local service were safeguarded by the condition of a sufficiently long recent residence and the possession by all candidates of a really competent knowledge of the vernaculars, fully equal to that of a well-educated Native. There was to be no distinction of pay, pension or other conditions in either of the two services based on race distinction. Had that recommendation been adopted in its integrity, such claims as those now preferred on behalf of what is styled the 'Uncovenanted Service,' but which really consists of the European portion of that branch, would have no leg to stand upon, and the Indian Treasury would be saved from any such preposterous demands. The Secretary of State, however, was unwilling to go up to Parliament, whose sanction to the new scheme was necessary, and the result is a continued adherence to the most mischievous anomaly and demoralization which the Parliamentary Act of 1870 had brought into existence. This state of things will certainly satisfy no legitimate interest, and the late despatch of the Secretary of State has already had the result of renewed agitation in favour of simultaneous examination in India for the Indian Covenanted Civil Service, from which I for one am not now inclined to entirely withhold my sympathy, from a certain point of view. However, financially speaking, I do not see how claims for exceptional treatment in the matter of pensionary payments in sterling at a favoured rate, based on race distinction, on behalf of members of the ruling race, are to be successfully resisted now or in future, so long as the legalised race qualification newly created in 1870 remains in force. The Hon'ble Member for Finance had therefore better allow this new disturbing element to have its due weight in his future calculations of 'Loss by exchange,' because, among other things, the personal interests of the European members of the Uncovenanted Service claiming the favoured treatment have an ever-increasing Parliamentary influence to support their side.

"Among the items of Imperial Revenue there are two which challenge attention at the outset, namely, Salt and Abkari. As regards the first, I wish to draw the attention of Your Lordship's Government to the extreme hardship and privation from which the great bulk of the Indian population suffers in consequence of the enhancement of the salt-duty which was sanctioned two years ago. I am no believer in statistical conclusions either way, when they are based solely on a comparison between issues or exports and imports of salt within short corresponding periods. A better and more trustworthy proof of the privations to which the poor are reduced in parts of India is furnished by the new laws which have had to be passed preventing the use of salt-earth and similar substances for edible salt, because men do not resort to such extreme devices unless they are hard pressed to do so by the high rate which the salt-tax has now reached. I would therefore press upon the favourable consideration of Government the paramount necessity of reducing the salt-duty to a considerable extent at an early date simply as a measure of relief of poor humanity. Even if we had not been blessed with a considerable surplus this year, I should have felt it a duty to bring this matter to notice with a view to afford the required relief even by a re-adjustment of the taxes.

"One branch of the department of revenue which appears to me to have developed a side of popular demoralization is the Indian Abkari department. In the face of the voluminous records recently published with the view of proving several positions taken up by Government in defence against complaints made by temperance movements and in other quarters, it is not my intention to enter into a controversy on either side. The important question which ought to engage attention is not whether spirituous liquor was known to the people of India before the advent of the British into the country, nor yet whether a larger or smaller quantity is now poured down the Native throat as compared with what was consumed ten, fifteen or thirty years ago. These are not, in my humble opinion, questions very pertinent to the issues to be decided. The real question is whether the sense of shame, the homage which hypocrisy pays to virtue, has been gradually rubbed off from the character of our working classes who form the great bulk of the consumers of country liquor and consequently the backbone of the Abkari-revenue. The manner in which the contracts are sold, the public and hitherto respectable localities in which liquor shops are allowed to be opened and half tipsy people permitted to infest Native thoroughfares, added to the prevalence of the belief, right or wrong, that the habit of drinking is not looked down upon by the ruling class—such are among the real causes under the operation of which all sense of shame or feeling of the necessity of con-

cealment has disappeared, and the free and open use of intoxicating liquors is becoming more and more fashionable without any immediate prospect of diminution, unless indeed the Municipalities bestir themselves, and, with the earnest and energetic help of District-officers, insist upon the removal of all liquor shops to places far away from public thoroughfares and respectable localities, and have them placed under strict police surveillance to prevent intoxicated persons prowling about the streets at dusk. With such measures to ensure respectful and temperate behaviour on the part of the people who frequent the liquor shops, the present demoralization is bound to diminish to a considerable extent, and may even disappear from among the more respectable working classes by a gradual change of fashion. In that event, the Abkari-revenue must also suffer a corresponding diminution. Even admitting the many errors of facts or statistics into which the temperance movement here and in England is believed to have fallen regarding the actual working of the Indian Abkari department, I am hopeful that careful and persistent efforts to show up the fashionable character which the habitual use of intoxicating drinks has assumed in India within the last twenty years, under the ægis of a State department, are destined ultimately to win the day in this important controversy, and therefore the time may yet come when the Hon'ble Member in charge of the Financial Department will have to count upon the Abkari-revenue becoming one of the uncertain and decreasing items of income, and to plan his annual estimates accordingly. Indeed, the signs of a better policy in this respect on the part of Government are not entirely absent from the papers recently published, as distinguished from the previous state of things, which is aptly described in a note by the compiler of a Provincial Revenue Handbook,* attached to the section 'MORAL PRINCIPLES' which were to underlie a wise administration of the Abkari department under the orders quoted in that Chapter. He states :—

'The following excellent orders have never been cancelled, but it is needless to say that they are not now acted upon, if indeed they ever were.'

"As regards the policy of segregation I have just alluded to, I may mention a custom which was handed down from the time of the Ameers of Sind, according to which all women following a certain immoral profession had to live in a separate street by themselves at a respectful distance from the towns. To my personal knowledge, this salutary custom continued to prevail in many towns

* Bombay, 3rd Edition, 1884, page 293.

for at least twenty years after the British conquest of that Province. I am unable to say whether the principle of the liberty of the subject has prevailed against the old state of things, and the persons concerned have since been allowed to live and commingle with other citizens in the midst of the towns of that interesting Province. Abstract principles of such liberty cannot be always suddenly transplanted from the West into the East without danger, in supersession of salutary checks against vice to which the people are accustomed from time immemorial; and there is no doubt that the free, public and fashionable use of intoxicants under a Government revenue monopoly is one of such abstract principles, entirely unsuited to the present condition of the masses in India. It will be noted that I make a distinction between the working classes who mainly patronise the Government liquor shops and the better educated classes among whom it is complained that intemperate habits are on the increase. I do not attribute this latter phenomenon to the Abkari policy of Government, and entirely agree with the dismal explanation of it contained in the papers lately published.

"There are other matters, such as the necessity to raise the minimum for income-tax, the actual working of the provincial contracts, with a stricter adherance to the policy of refunds to Provincial Governments on the return of better times, and some other heads of the Budget, which call for notice, but there was no time for me to take them up and be ready to discuss them at this meeting; nor is it perhaps to be regretted, because the time at our disposal is limited at this very end of the session, and there are many Hon'ble Members who, I believe, are also going to address the Council."

The Hon'ble SIR ALEXANDER WILSON said:—"My Lord,—There is a general feeling of satisfaction that the anticipations of my Hon'ble friend Sir David Barbour as regards the financial position of the country have been realized.

"The statement which he placed before the Council last week shows that not only in the past year have the finances been found on a sound and profitable basis, but it also holds out a greater measure of hopefulness for the future.

"While congratulating the Hon'ble Member on this happy state of affairs I concur very fully in those prudential remarks with which he closed his introductory statement last week.

"No doubt, when a 'surplus budget' is declared, there is a popular expectation of some corresponding reduction in taxation.

"But the disappointment on this occasion will, I feel sure, be tempered with the appreciation of the wisdom of the policy which declines in the first flush of prosperity to part with any of the resources of the State.

"We have only to look back a few years to realize the fallacy of the assumption that a surplus in any one year, as in 1882, means a continuance of prosperous times, or that it can be used to make a temporary reduction of the public burdens without a danger of again subjecting the country to a period of difficulty such as we have now happily left behind us.

"The statement we are asked to discuss to-day is at once clear and convincing, and, as far as I can learn, commands universal confidence and approbation.

"I will not attempt to enter into any analysis of the figures, but I congratulate the Finance Department on the improved form in which these figures have been placed before us.

"From what the comparatively short time has permitted me to see, they give a full and comprehensive summary of the financial position in a manner alike intelligible and convenient for reference.

"The exposition of the policy in regard to the grant for famine relief will be welcomed by those who have, somewhat unreasonably I think, come to the conclusion that the provision hitherto made in this direction had been done away with; but doubts are entertained whether, under the exceptionally favourable circumstances, the Government are justified in retaining the contribution from the Local Governments and applying it to this purpose.

"Fortunately for the country, scarcity has not in any marked degree for some time past pressed upon the people. The great progress which has been made in opening up communication has provided a means of distributing the food resources of the country, which is in itself an insurance against a repetition of the horrors of famine experienced in the past.

"If we have not heard so much of famine of late years, it is not because risk of short or partial rainfall, and consequent scarcity of food-grain, has disappeared, but that the people have now the means of meeting such a contingency and supplying their own needs from the resources of more fortunate parts of the country.

"In the statement now before the Council figures are given showing the number of miles of railway open to have increased from 8,382 miles in 1880 to 14,437 miles in 1890, or by more than 72 per cent. in ten years; and, though India is not yet, as regards railways, in the position sketched out by Lord Mayo, we must admit that the progress made has been a protection against the effects of scarcity over particular and special areas.

"I have read with much interest the remarks under the head of Railway Finance, and, while I acknowlege that much valuable information is given therein, I regret to find no defined policy put forward by the Government with regard to the future construction of railways.

"I quite recognise the difficulty in the face of ever-changing circumstances of laying down any hard-and-fast line of action; but I submit that the time has come when Government should be prepared to say what part it will take in the future.

"A glance at the figures shows that railways occupy no insignificant position in the Revenue accounts of India. If the Government are prepared to go on with the development and extension of railways and branch railways throughout the Empire, I do not think that the modest allotment of 6¼ crores as provided for in the Budget will go far to keep pace with the requirements of the country. And, on the other hand, if Government is not prepared to go on with the work, I think it is incumbent that it should throw the field more widely open to private enterprise, on such terms as may seem just and reasonable.

"I would solicit for this subject the careful consideration of the Government of India; for, though the remarks of my Hon'ble friend on the currency question were exceedingly guarded, should any settlement of the relations between silver and gold be arrived at, and the uncertainty of exchange be thus modified, there would be no lack of capital offering for the extension and development of railways in India.

"Without some defined policy being laid down, however, I fear that the patience of promoters and capitalists is likely to be exhausted before any of the schemes proposed are adopted, and meanwhile the trade requirements of the country are unsatisfied.

"There is one other point I would like to touch upon, which, from all mention of it having been omitted in the statement before us, must, I presume, have been

considered by my Hon'ble friend to have been conclusively dealt with last year, and that is the management and disposition of the Government balances.

"Mr. Steel, who occupied with far more ability the position I have now been called upon to fill, expressed as his own opinion an entire concurrence with the views then enunciated by the Hon'ble Finance Minister that these balances should not be made available to the public in the furtherance of trade.

"To what was then stated by the Hon'ble Mr. Steel, with which I quite agree, I may now add that I have the authority of the Committee of the Bengal Chamber of Commerce to say that that body supports the action of Your Lordship's Government and is not prepared to advocate a policy which would bring the Government into the money market by making its reserves available for commercial purposes.

"I hold that it is the interest of the country that large supplies of bullion be attracted here, and the only way to secure this is to permit the ordinary laws of supply and demand to operate.

"If Government balances be placed at the disposition of trade, the Banks will prefer to work on borrowed money rather than bring out specie to redress the balance of trade.

"If the Banks expect a fall in exchange, they will naturally keep as much as possible of their funds in England. We may then see a situation when the Government balances are depleted, when the Exchange Banks have no money here, and when war, famine or other causes may cause Council drafts to be stopped.

"If such a conjunction should arise, the only recourse would be to bring out silver if it were available. Meantime, merchants would be unable to cash their bills, there would be a suspension of cash payments and a general panic would be inevitable."

The Hon'ble MR. EVANS said:—"My Lord,—I congratulate the Government on a result so far better than could be looked for.

"To find a surplus of Rx. 2,733,000 after estimates for one of Rx. 106,000 is indeed good fortune.

"The Government will, I think, have the approval of the public in their general schemes for the disposal of the surplus.

"Considering the casual character of the portion of the surplus attributable to Opium and some other sources, and the heavy demands of the immediate future and the necessity for providing for the recurrence of Famine, no remission of taxation could, I think, be reasonably asked for.

"The Revenues appear to have been well and carefully administered, and the outlook is very hopeful compared with that of later years, after allowing for the changes and chances of Indian Finance.

"The expenditure for the Army and Special Defences for the coming years, over Rx. 2,253,000 (two millions and a quarter), is very heavy—so heavy that it might, had it been necessary, have properly been spread over more than one year. But our first duty to this country is to defend it, and to have our army and defences in such a state that no foe is likely to attack us. The expenditure, heavy as it is, I think necessary for future safety. Defence takes precedence even of development, and if the expense is necessary, and if we can afford to meet it with the current revenue of the year, there is no reason why we should not do so, and many reasons why we should.

"Next, it is proposed to spend Rx. 3,750,000 on Railways and Canals not chargeable to Revenue, that is, works for the development of the country which are ordinarily constructed with borrowed capital, and it is further proposed to avoid borrowing this year by devoting the surplus of the past and coming years to this purpose; and it is proposed to lend Rx. 900,000 to local bodies without borrowing.

"I am sure the Council will be glad if the Hon'ble Member in charge of the Public Works can inform them which of the works are productive and likely to pay, and which are constructed for defence or relief of Famine and are unproductive works.

"Subject to the remarks I am about to make, the use of the surplus to diminish borrowing, and thus strengthen the finances, seems wise and statesmanlike.

"But excellent as the general scheme of the Budget is—providing for the two cardinal points of defence and development—there is one thing against which I most strongly protest, and in this protest I shall, I believe, express a large body of outside opinion.

"This is the manner in which the contribution of Rx. 490,000 levied from the Local Governments is dealt with.

"This sum was demanded by the Government of India and given by the Local Governments under a complete, though innocent and excusable, mistake of fact.

"When the mistake was discovered, the money should, so far as I can see, have been handed back at the first opportunity, unless some adequate political necessity could be shown for its retention.

"It is retained without a word of explanation.

"The Local Governments can speak for themselves, so far as they are represented here: I speak for the public for whom and for whose service the Local Governments held those funds.

"Those funds in the hands of the Local Governments were applicable to Provincial improvements, improvements in the Police and in the administration of justice and other matters which touch the daily life of the people.

"They are now diverted from this purpose to Imperial purposes at a time when the Imperial finances are in a state of unusual prosperity with a hopeful outlook, and at a time when the finances of this Province at least are straitened and overburdened.

"It is necessary I should remind the Council of the principles of Provincial government. The local administration is in the hands of the Local Governments. They have to provide the people with protection for their persons and property by means of Police and Criminal Courts, and with redress for civil wrongs and enforcement of debts and contracts by the machinery of civil justice. To enable them to discharge these and the other manifold duties of local government, they have allotted to them by a five years Provincial contract certain heads of local revenue, including the whole of the receipts from the administration of justice and a certain percentage of some of the sources of Imperial revenue.

"The allotment is made on the principle of producing an exact equilibrium between expenditure and receipts at the date of the contract—whatever they can save during these five years by economy in administration, or by the expansion of their allotted sources of revenue, they are at liberty to spend in the improvement of their administration and the development of the province.

"This is the only means they have of providing money for reforms and improvements. They are obliged to keep a minimum balance—in the case of

Bengal, I believe, 20 lakhs. These sources of revenue and the savings from them were guaranteed to the Provinces and the Provincial Governments by the contract of the Government of India for five years from 1887 to 1892.

"But bad times came on the Government of India. The Budget Estimate framed in 1888 for 1888-89 showed a deficit of Rx. 698,000. The Revised Estimate of that year framed in March, 1889, showed a deficit of Rx. 201,700, even after imposing additional taxation. It was only by revising the Provincial contracts before their time, or, in other words, repudiating them or by getting a contribution from the Local Governments, that a deficit on the Budget of 1889-90 could be avoided.

"This latter alternative was decided on, though I understand the former had been sanctioned by the Secretary of State in view of the supposed financial embarrassment of the Government.

"I am not raising any objection to the principle that when there is Imperial necessity all other considerations must be set aside.

"It was on these grounds and under these circumstances that the demand was made and complied with. Rx. 100,000 (ten lakhs) was the contribution of Bengal—small in amount, but like the widow's mite all that she had in the way of disposable surplus.

"How straitened the finances of Bengal have been this year owing to a bad financial year, and the loss of this disposable balance, His Honour can tell you better than I. I can only vouch for the outward and visible signs of poverty, ruthless economy and starving of all departments—all the symptoms of a painful attempt to make both ends meet. How near they have met I do not know.

"Now the question is a plain one. Would the Government of India have taken this contribution had they known the real outturn of the year, if they had known that they would have a surplus of over two millions for Imperial purposes without it? There can be only one answer—an emphatic 'No.'

"Then why do they keep it when the mistake is discovered? Is there any necessity? None. It is so little wanted for this year that it is actually cut out of the accounts, leaving a surplus of Rx. 2,243,000 for this year and an estimated surplus of Rx. 304,900 for 1890-91.

"This surplus of 1890-91 is arrived at after providing for an extraordinary expenditure of over two millions and quarter for Army and Special Defence purposes.

"But it is proposed to leave this Rx. 490,000 to increase the surplus of 1890-91 from Rx. 304,000 to Rx. 794,000 for the purpose of partially restoring the *Famine Grant* in that year by transferring Rx. 524,500, that is, this unfortunate Rx. 490,000 plus Rx. 34,500 from the former surplus to the heading of 'Famine Grant' in 1890-91 so as to bring up this heading to Rx. 600,000. A part of the large surplus of the present year is treated in the same manner, that is, Rx. 433,000 is removed from the heading 'Surplus' and inserted under the heading 'Famine Grant' and labelled 'For the reduction of debt.' I have looked carefully at the result of moving these figures from the heading 'Surplus' into the heading 'Famine Grant.' To my uninstructed eye the result is—'*Nil.*'

"The whole of the surplus of both years is devoted to the reduction of debt by diminishing borrowing.

"These two sums of Rx. 433,000 and Rx. 524,000, after having been taken out of the surplus and exhibited as 'Famine Grant', are expended in exactly the same way as if this had been left to appear as surplus. This and the surplus are applied to the construction of Railways and Canals not chargeable to Revenue in order to avoid a loan. I can find in the transactions only words and no reality, and the so-called 'Famine Grant' in these years appears to be nothing more than a phrase. The result is that the Rx. 490,000 is practically carried on with the surplus of next year and dealt with in the same way as the rest of the surplus.

"After the lucid exposition in the Financial Statement of the real meaning and object of what has been variously called 'the Famine Insurance Fund' and the 'Famine Grant' I had hoped we might have dispensed with these misleading terms.

"The Hon'ble Member has made it plain that there never was intended to be any 'Fund' or 'Grant' in the strict sense of the words, and that all that was determined on was to estimate, wherever possible, for a special surplus of Rx. 1,500,000 in each year which was to be applied in reduction of debt or in avoiding borrowing or on works which tended to prevent famine; and to provide this special surplus before any ordinary surplus available for the remission of

taxation could be considered as reached: this was based on a calculation that famine on the average would lead to a loss and a consequent borrowing of Rx. 15,000,000 in every ten years.

"This is sound and wise policy and must command general approval.

"Why this principle should be obscured by the use of misleading terms is not clear. I presume it is to avoid the appearance of a surplus A misleading phrase may sometimes be practically useful, though it should be avoided, if possible. I fear I incur a charge of presumption in criticising the statement of one who is a master of the science of Finance, which I profess no knowledge of.

"But the Financial Member has conclusively shown that, taking the two years 1889-90 and 1890-91 together, the Government have more than done their duty in this respect; for they propose to apply on the two years taken together Rx. 4,171,000 for the purposes for which the policy of a yearly special surplus of Rx. 1,500,000 was adopted.

See paragraph 20 of Statement.

"That is, they have proposed to apply to these purposes over Rx. 4 millions instead of 3 millions in the two years

"Thus, if they gave back the contribution of Rx. 490,000 to the Local Governments, they would still have applied over three millions and a half to the purposes intended by the words 'Famine Grant.'

"The conclusion seems to be irresistible that there is no justification to be found on the face of the Financial Statement for the retention of the contribution, but a demonstration that it is unnecessary. If so, the first principles of justice call for its refund to the Local Governments.

"There is another important point—the taxation of litigants in the Civil Courts—which I must call the attention of the Council to.

"The Financial Member has given some figures in the Resolution of the 11th January last. I accept these figures with the same reserve as they are offered. Taking them as correct, what do they show? They show that the administration of civil justice in India costs Rs 2,14,27,000—over two crores and fourteen lakhs, or Rx. two millions one hundred and forty thousand.

"Of this all but the small sum of Rs. 12 lakhs—Rx. 120,000—is obtained by taxation of the litigants.

"There is a separate provincial machinery for the administration of justice in each Province. The result is that the Bengal litigants are taxed 14 lakhs more than the total cost of civil justice in that Province. Justice in Bengal pays its own way and contributes 14 lakhs to the General Revenues.

"In Madras, the litigants pay for the machinery, but yield no surplus. In Bombay, the litigants contribute ⅔rds of the cost, and the General Finances contribute the rest—10 lakhs. In other Provinces the litigants contribute a certain amount of the cost, and the Government the rest. The nett result, as I said, was that the litigants contributed 2 millions and odd, and the general public only Rx. 120,000.

"A number of serious questions arises on this state of facts—

"(1) Are the litigants unduly taxed?

"In the Statement of Objects and Reasons of Act XXVI of 1867 we find the following statement:—

'It is not contended that the expenditure on Courts of Justice should be met in full by a tax on such individuals of the community as alone resort to the Courts, because it is manifest that all classes of the community have a more or less direct interest in the administration of justice, especially of justice in the Criminal Courts. But it is only reasonable that those who resort to the Courts should contribute a larger proportion than the general public to the support of them as institutions by which they more than others are immediately benefited.'

"In 1870, in the debate on the motion for leave to introduce a Bill which became Act VII of 1870, Sir H. S. Maine said:—

'The true doctrine was that the litigants and the general tax-payers should each contribute something. Nobody denied that the litigants benefited by the Courts, and nobody would deny that the rest of the community derived some advantages What the proportion paid by each should be was a question not of theory but of experience, to be equitably settled by Government as trustee for all.'

"The time has now come when the civil litigants over the Empire contribute the whole cost less 12 lakhs, while Madras litigants contribute the whole cost in their Province, and Bengal litigants 14 lakhs more than the whole cost in Bengal.

"The question is a serious one, and, in view of hopeful financial prospects in future, I bring it before the Government for their consideration.

"(2) Why do Bombay litigants contribute ⅗rds only, and why does Bombay show a deficit of 10 lakhs and Bengal a surplus of 14?

"Is it that the Bombay establishment and expenditure is extravagant, or that the Bengal establishment is starved?

"There is something here that demands inquiry, and there ought to be a Commission of Inquiry.

"(3) Taking the Provincial judicial system as separate, it is clear that Bengal litigants, who pay so much, have special claims to have an efficient administration of justice; but the complaints on all sides are long and loud. I drew the attention of the Council to this in my remarks on the Budget last March.

"I do not desire to weary the Council by going over the same ground again. The provision of 30 Munsifs (less than half the number demanded by the High Court) has proved wholly inadequate to work off the arrears.

"The litigants of Bengal who pay more than the whole cost cannot get their cases tried. The zamindars whom the Government sells up remorselessly when they do not pay by the sunset of the appointed day cannot obtain the necessary facilities for the recovery of their rents. The Munsifs are terribly overworked, and there is much sickness among them in consequence. They still try cases in ill-ventilated huts. A Commission was appointed. The report is not out, but it is evident there must be an increase of Munsifs or an increase of summary powers.

"The rent-suits, though small in amount, involve issues momentous to the parties and to the community. What is apparently a suit for arrears of rent may involve vital questions as to area and rates of rent. The High Court has refused, and I think rightly, to allow these suits to be decided summarily like Small Cause Court cases.

"It is no doubt right to have a full enquiry before making permanent arrangements, but adequate temporary arrangements should have been made. They have not been made.

"The ministerial officers of the Courts are too few and under-paid. Much of the business is carried on gratis by apprentices or 'hangers-on' who hope to succeed to places.

"This produces irregularity and delay and suspicion of unfairness.

"That a Province where the litigants pay all the cost of civil justice and yield a surplus of 14 lakhs to General Revenue can get no better administration of justice than this is, to say the least, unsatisfactory. This state of things has grown up gradually and is not the fault of the present Government or of any one here present, nor can it be removed by a stroke of the pen. What I complain of is that prompter measures have not been taken to alter this state of things, which was originally pointed out by the High Court, I think, in 1887. I trust no time will now be lost; but nothing can be done by the Provincial Government without funds.

"A word as to the Home Charges.

"I am not one of those who hope to get rid of them or to prevent their being very heavy. That is unavoidable in the present state of things, and I see no remedy for it. But I wish I could feel that the charges on the other side of the water were subject to the same rigid scrutiny as those on this side.

"The transport charges are very heavy. I am not certain that the charges made by English Departments for the repair of transport ships would be allowed if they had to pass the scrutiny of our Public Works Member. I should like to see the expenses of the India Office submitted to a scrutiny as close as that of our recent Finance Commission.

"I am glad to see that we are getting to the end of the charges mentioned in paragraph 56 of the Statement as 'Arrears of Home Charges on account of British Troops in India—effective.'

"If my memory serves me, this was a retrospective demand of 2 millions sterling made by the War Office, or some other English Department, on India some years ago, which has hampered us in our years of depression. I think it was stoutly resisted by the Indian Government, and that the weakness (if any) was on the other side of the water. I am glad to learn we are getting to the end of it.

"The finances of India are administered with a single-minded desire for the welfare of the country, but mistakes and shortcomings are inevitable, and those who are mainly concerned with Imperial problems which occupy the foreground of their thoughts may profit by being reminded that the bulk of the people look mainly to the concerns of their own daily life. Those concerns are mainly in the hands of the Provincial Governments, and any appeal to subordinate Provin-

cial objects to Imperial ones, except in cases of great emergency, is to most people like an appeal to subordinate the present life to dim hopes of a future one. Their first prayer is for daily bread.

"I do not ask the Imperial Government to neglect Imperial matters. I only ask them not to lose sight of our present necessities in pursuit of possibly higher objects."

The Hon'ble SIR CHARLES ELLIOTT said:—"I am glad to have the figures at hand which enable me to answer the question which has been directly put to me by my hon'ble friend Mr. Evans, and I will also take the opportunity of replying to the remarks which fell from the Hon'ble Sir Alexander Wilson, who enquired whether it is possible for the Government of India to make any statement of its policy in regard to railways. First, with regard to the Hon'ble Mr. Evans' question as to the manner in which it is proposed to appropriate the 375 lakhs which will be devoted to the construction of canals and railways during the year 1890-91. The first item in that expenditure consists of 55 lakhs devoted to canals. These are mostly large irrigation-works in the Punjab, the North-Western Provinces and Madras. In the Punjab there are two great canals in progress—the Sirsa Project, which is a branch of the West Jumna, and the Chenab Canal. Both of these works will open out large tracts of dry land which are extremely fertile if only water can be supplied. And I venture to say there is hardly any item of our expenditure which will be so remunerative as expenditure on canals in the Punjab. In the North-Western Provinces the work in hand is chiefly the extension of the distributaries of the Lower Ganges Canal, which have long been held in suspense in consequence of the failure of the Nadrai Aqueduct. In Madras the chief works they have in hand are that great engineering work, the Periyar irrigation scheme, and also the extension of the distributaries of the Godavari system. These are the main objects on which will be concentrated the expenditure of 55 lakhs, and I only wish that we could grant a larger amount of money to be spent under this head.

"Deducting 55 lakhs from 375, we are left with 320 lakhs for railway expenditure, which may be divided into three heads, namely, expenditure which is continuous, expenditure which is obligatory, and expenditure which is optional. The continuous expenditure, which recurs year after year, is the grant of 70 lakhs for what is called Open Line Capital on State Railways, that is, for extensions and improvements which the increase of traffic requires on State lines. These are improvements rather than extensions. Hardly any new mileage is added to the railway system by this expenditure. Taking 70 lakhs from 320 lakhs, 250

lakhs remain for the construction of new lines of railway. Of this, about 184 lakhs will be obligatory expenditure in 1890-91, that is, will be devoted to works which we have begun and must finish. The principal one is the Villapuram-Guntakal line in Madras. The completion of this line will, we hope, take place about April, 1891, or soon after. This is the last of the more important of those great famine protective lines which were set agoing originally by the Report of the Famine Commission, and were taken up and brought into a regular programme in Sir Theodore Hope's time, and have all now been carried out with this exception. About 50 lakhs must be spent on military lines which we have begun and shall complete this year. We also propose to spend 50 lakhs upon the extension of the railway system in Burma, and here I may say that nothing has ever been more remunerative than the construction of the Toungoo-Mandalay Railway, which was opened about this time last year. It has not only paid its working expenses but also the interest upon the capital laid out, which, I believe, can be said of no other railway in its first year. There is good reason to hope that the extension we are now carrying out in the Mu Valley will also prove remunerative; but, whether it does so or not, the construction of this line will be of the highest importance for the development of Upper Burma and in providing for its military and administrative necessities. The Government of India propose to make this a continuous item of expenditure, and to set aside 50 lakhs every year for railway purposes in Upper Burma.

"This leaves us with only 66 lakhs out of 320 lakhs for optional expenditure during the current year on new schemes. The programme for expenditure under this head is not absolutely settled. There are a number of projects before the Government of India on which survey work is now going on. Until these surveys are completed and the estimated cost worked out, we cannot say with entire certainty which of these lines will be taken up first, or second, or third. We shall be guided very much by the survey reports in our arrangement of them according to their urgency and probable remunerativeness. As far, however, as we can see, it seems probable that we shall be able to start the East Coast Line after the rains, and possibly some other lines may be taken up; but it would be premature at present to say what will be done.

"The schemes before the Government of India which are now under survey are chiefly connected with the different sections of the rival lines which have been proposed to run between Benares and Calcutta, and for the purpose of straightening the Bengal-Nagpur line and bringing it more directly to Calcutta instead of carrying the whole of the produce of the Central Provinces round by

Assensole. The surveys of all these lines are expected to be completed and the reports to be sent in in the course of the rains; and before the working season begins the Government ought to be in a position to say which of these lines should be taken up.

"As, however, my hon'ble friend's question probably was meant to extend beyond the year now opening, and to refer to subsequent years also, it will be well to mention that what I have called the obligatory expenditure on lines now in hand will be reduced year after year, and a larger margin left for what may be called optional expenditure on new schemes for commercial railways which we hope to take up. As compared with the 66 lakhs of the present year, we expect in 1891-92 to have rather more than 200 lakhs, and about 300 lakhs in the two years succeeding, to devote to these objects. With these sums it is hoped we shall make substantial and satisfactory progress.

"This leads me to one of the two remarks touching my Department which fell from my Hon'ble friend Sir Alexander Wilson, who said that the sum of 6¼ crores set down for expenditure on railway construction in the present year is a smaller sum than is compatible with a satisfactory rate of progress in future years. His reference was apparently to the table given in the 51st paragraph of the Financial Statement. It will be observed that the details of expenditure are given in that table under three heads—(1) the construction of State railways by the State, (2) the construction of State railways in the hands of Companies, and (3) the extension and improvement of Guaranteed lines. This last head—the development of Guaranteed Railways—is of the same nature as the 'Open Line Capital,' which I have explained already. It meets new wants as they arise, and provides for the opening out of new stations, the increase of sidings, the larger supply of buildings and quarters, water-supply, workshops, and so on. But it does not correspond to any increase of mileage in railway construction. The figures show that on the construction of State Railways we have spent during the last eleven years 73½ crores, but out of that 34 crores and 40 lakhs have been spent in the purchase of four lines—the Eastern Bengal Railway, the Sindh, Punjab and Delhi, the Oudh and Rohilkhand Railway, and the South Indian Railway. That leaves 38 crores and 60 lakhs spent on actual construction, which, divided into eleven years, is almost exactly 3½ crores a year. This is slightly more than what we intend to spend in the coming year, namely, 3 crores and 20 lakhs, but considerably less than what we hope to spend the next year after, or 4 crores; and in the two years following, if all goes well, our Finance Minister hopes to be able to make a grant of 4½ crores for railway construction. So that, as far

as State Railways are concerned, the progress of construction will, for the immediate future, be accelerated, and not retarded.

"The second column of the table in paragraph 51 shows the expenditure on State Railways constructed through the agency of Companies; it amounts to 22 crores in the last seven years, or about 3 crores a year. These sums have chiefly gone to the three large Companies—the South Mahratta, the Indian Midland and the Bengal-Nagpur—which were started about seven years ago. These lines were designed to traverse the areas which were most in need of protection from famine, and the Bengal-Nagpur Railway was intended to open out the most fertile part of the whole of India,—the Chhattisgarh plateau,—so as to enable food, which had hitherto been landlocked, to be exported for the consumption of the people. These railways were placed in the hands of Companies with a guarantee upon the capital—in the one case of 3½ per cent. and a share in the net earnings, and in the other two cases a guarantee of 4 per cent. with a share of the surplus profits. Thus, we have spent on an average, in the last 11 years, 6½ crores a year—3½ crores through the State, and 3 crores through guaranteed Companies. But these guaranteed Companies have now done their work, and the main question of importance is whether the system of guarantees should be continued or revived in the same form or under any modification or disguise.

"To answer this question would be to answer Sir A. Wilson's enquiry as to what the railway policy of this Government is; and it can hardly be expected of me at this brief notice to give a full and exhaustive statement of it. But it may be useful to touch briefly on some of the most important heads of our policy. Looking at the system of employing Guaranteed Companies of the old class, however much we may admit that the creation of these Companies was justified by the fact that it would hardly have been possible for the State at that time to have raised the whole of this capital on its own credit, it cannot be denied that it is not economical to raise money at 3½ or 4 per cent., through the agency of Companies, when it can be raised by the State at 3 per cent. as is the case now. Therefore, it is not the policy of Government to encourage the creation of any more Companies on terms corresponding to those I have just mentioned, by which the capital raised by the shareholders, while subject to no risk, is secure of receiving a larger rate of interest than capital would receive which was lent to the Secretary of State on the security of the Government of India. If we can borrow at 3 per cent., it seems unnecessary to go to a Company to ask it to borrow for us at 3½ or 4 per cent. Companies created on these terms have been called efforts of 'private enterprise,' but I think it

will be admitted that this term cannot properly be applied to cases where the capital is supplied on a direct or virtual guarantee of receiving a larger rate of interest than we need to offer in the open market. There is, however, another form of private enterprise which thoroughly deserves the name. I can refer to two Companies which afford an admirable example of genuine private enterprise, where the shareholders have put down their capital without any direct guarantee from the State, trusting only to the productiveness of the country and to economy in building and good management in working the lines. The Bengal and North-West Railway Company is the earliest instance of private enterprise of this kind, in which the shareholders raised the capital and constructed, and are now working, the line. The next development was that afforded by the Delhi-Kalka Company, which only constructs the line and leaves the East Indian Railway Company to work it, the shareholders receiving a fixed proportion—50 per cent.—of the gross earnings. Private enterprise of this kind the Government of India is anxious to encourage to the largest possible extent, subject to certain broad principles which must govern the selection of projects, and the sanction without which they cannot be started. It would be impossible to allow promoters to come up to Government with possibly ill-digested schemes in their hands and to obtain leave to run a line here or run a line there; it is essential that the scheme should be subjected to careful examination as to which was most likely to be useful and remunerative, and to fulfil all commercial and administrative wants. It is necessary carefully to criticise these schemes, and to apply to them certain broad principles which have been laid down after elaborate discussion. I shall mention here the four chief principles.

"The first of them is that we object to a multiplicity of Companies and aim at having a few large Companies rather than many small ones. It is easy to understand how desirable a thing it is that the staff which manages a railway should be fully employed, and not have a system of only 300 or 500 miles to work when it is capable of managing 1,000. The Delhi-Kalka Railway is an instance of an undertaking which, if it were going to depend on its own staff for its working, would be too small for economical management: it was a wise policy in the shareholders to arrange that it should be worked by the East Indian Railway Company.

"The second principle laid down is that of territorial jurisdiction. Every railway which has been started should have a prior right of supplying the whole of the tract which it serves. It cannot be tolerated that another Company should be permitted, if it finds a small and profitable tract of country adjoining

that railway, to construct a branch or feeder line alien in interest to the main line. The first choice should be given to the railway which serves that tract, and as far as possible every railway system should have its area marked out, and every development and extension within that area should be carried out by the trunk line.

"The third principle relates to the very vexed question of the gauge. It was laid down by the Parliamentary Committee of 1878 that the metre gauge should not be introduced into a broad gauge country, unless the probable traffic is so light that it would not pay to construct a broad gauge. This, however, is a principle which is difficult of application. Hardly any project of a new railway could be considered, and, as a matter of fact, hardly any project has been considered, as to which arguments could not be used, and have not been used, in favour of one or other gauge. The question has been very much discussed, and our object has been, as far as possible, to fix the areas to which the metre gauge and the broad gauge system should respectively be confined. As regards the metre gauge, we have one tract in the south and south-west of India where the Southern India and Southern Mahratta Companies (both metre gauge lines) are in possession, and there it is but natural that any extensions now made should be of that gauge. Similarly, north of the Gogra, we have the Bengal and North-West Railway, the Tirhoot and Northern Bengal Railways; and there, too, the metre gauge has been established. But on the great central part of the peninsula of India there has been considerable admixture of the two gauges, and the feeling has grown in strength that the break of gauge involved in this admixture is a serious evil, and will be more and more an evil as traffic increases. Very strong and valid reasons will be required to get over this objection to the extension of the metre gauge or the construction of new metre gauge lines within this central area. The question is still under consideration, but we hope we shall be able to lay down definite rules as to the tracts of country to which the broad gauge should be entirely confined, so that when a new project comes up for sanction the question of the gauge should be eliminated, and we should no longer have first of all to fight out the dispute on what gauge it is to be constructed.

"The fourth principle is one which is somewhat akin to that which I mentioned first—the objection to the multiplication of small Companies. It is, that a Company should not be allowed to take up only the best and most remunerative part of a large scheme. It should not, so to speak, be allowed to occupy the neck of the bottle, and compel the traffic of a whole tract to pass over it, without giving it any assistance. It must take the whole scheme, and not select a part of it. As an instance of what I mean I may refer to a project which begins to

assume a somewhat prosperous appearance—the railway from Chittagong to Assam. Several promoters have seen that the southern portion of that country between Sylhet and Chittagong will probably prove profitable, because it runs through populous and productive tracts of country. But every one can see that the northern portion must be very much less productive, and the Government of India has steadily refused to give to those promoters the southern portion alone unless they agreed to take the northern portion also.

"These four broad principles are the most important of those which have been laid down by the Government of India for its guidance. And the railway policy of the Government may be briefly described as a policy of carrying out the extension of the railway system, subject to these principles, and mainly in two ways—first, by pushing on the construction of new lines through the Railway Department of the Government with State funds; and, secondly, by giving all possible encouragement to genuine private enterprise, using the term in the manner and with the limitations which I have already described."

The Hon'ble RÁJÁ DURGA CHARN LAHA said:—"I spoke last year, on an occasion similar to this, rather despondingly of the future, not knowing what might arise to disturb the financial equilibrium in such a vast concern as the Government of India. Happily, however, not only no such disturbance occurred, but almost every source of revenue showed improvement beyond expectation, and I am glad that the Hon'ble Finance Minister has thus been enabled to produce a most successful balance-sheet.

"He said last year that his deliberate conclusion was that while there was every need for economy and for husbanding the revenue there was no ground for despondent or pessimist views. 'Unless some unforeseen disaster occurs,' he added, 'there is every reason to hope that the lapse of two or three years will show a decided improvement in the financial position of the Government of India.' His anticipations, I am happy to find, have to a great extent been realised this year; and, with his decided expression of opinion as to the need for economy and for husbanding the resources, it would be unnecessary on my part to ask him to continue his watchfulness in these respects in the future, as he has so ably done in the past.

"The Hon'ble Finance Minister proposes to partially restore the Famine Grant, and has stated the importance which is attached by the Government of India and the Secretary of State to the maintenance of such a provision. To my mind the name 'Famine Grant' is a misnomer. It is this name which has

misled the public mind. People naturally thought that the object of the Grant was the provision of funds for the actual relief in time of famine of persons who were in distress. This has never been the exclusive object of the Grant, as I can testify from my personal knowledge, having been at one time one of the Commissioners connected with the fund. When the policy of strengthening the finances in connection with Famine was originally adopted, it was intended to employ a portion of the surplus every year in the direction of reducing debt. This policy was slightly changed in subsequent years, and it was decided that one-half of the Grant should be devoted to the construction of railways and canals, which would protect the country from famine, and the other half applied to the reduction of public debt. There was a further departure from the original policy when it was determined that the Grant should be appropriated to meet loss arising from Protective Railways, and that the interest charge on certain Railways should also be a charge against the Grant. All this shows that the views regarding the Grant have been constantly changing, and there is no wonder that there should be misapprehensions in the public mind regarding its nature and effects. The complaints which have been frequently made regarding its misappropriation have arisen from such misapprehensions, and it would be as well to remove the cause in which they had their origin. The main object being simply reduction of debt, and construction of Protective Works, where is the necessity for calling the present appropriation of the surplus by the name of 'Grant for Famine Relief and Insurance?' So far as I understand it, it is nothing but a Reserve Fund. 'In practice,' to use the words of the Finance Minister, 'it is an insurance against temporary financial disaster of any kind.' I should, therefore, think that if a name must be given to it I would suggest that it should be called simply a 'Reserve Fund.' If the Finance Minister would in a prosperous year lay by Rx. 1,500,000 and apply a certain portion of this amount to the reduction of public debt, and the balance to the construction of Protective Works, the object aimed at would be attained without creating mistaken ideas in the public mind. If at times of financial difficulties no surplus could be reserved for this purpose, or if public exigencies required that the Grant should be employed in a different direction, no valid complaints could then be made for misappropriation of a Grant which, under an inappropriate name, has so long misled the public.

"It is very satisfactory to note that there has been a large improvement, under some of the principal heads of Civil Revenue, of a permanent nature. The increase shown under Land-revenue can be always depended upon as certain and safe. It is a matter for rejoicing that all Provinces participate in this

improvement. Burma is contributing her share, and the Central Provinces, the North-Western Provinces, Oudh and the Punjab are showing large increases. The system of periodical settlements in these Provinces accounts for this improvement, and I observe that fresh settlement-operations are showing increase of revenue. Without entering into the question as to the advantages or disadvantages of periodic settlements as compared with a permanent settlement, I am bound to say that great caution ought to be exercised by Settlement-officers in assessing land. Some of them are carried away by the idea that a revised settlement carries with it a necessity for an increase of revenue, and in the name of improvement great hardship is sometimes inflicted on landholders in the shape of over-assessment of their estates. It is certainly a source of satisfaction that there should be increase under Land-revenue, because this is a source of income from which elements of uncertainty can to a great extent be eliminated; but whenever I hear of a large and rapid improvement I feel a certain amount of doubt as to whether this has been effected without inflicting hardship on the landed classes.

"The estimates of income, I find, have been prepared with moderation. Nothing approaching to any certainty, however, can be said regarding Opium and Exchange. They are subject to such fluctuations that it is extremely difficult to make any satisfactory estimate regarding them. Opium has been taken at Rs. 1,060 per chest and Exchange at 1*s.* 4·552*d.* These I consider safe figures, and, however great the fluctuations may be, the net results in all probability will be satisfactory.

"I must recognise the immense difficulty of preparing a Budget Statement for a country like this, where the financial conditions are constantly fluctuating. The one before this Hon'ble Council appears, however, to have been framed with great care and judgment, from data to which no exception could be taken, and I congratulate the Hon'ble Finance Member on the marked success which has attended his financial management of the Empire.

"It is too early yet to speak of any remission of taxation. There will be time enough next year to think of it, if the position of affairs continues to be prosperous."

"The Hon'ble SYUD AMEER HOSSEIN said:—"My Lord,—One cannot but rejoice at the hopeful condition of the Budget that is before us. I entirely share the satisfaction which has been expressed thereat by the exponents of public opinion in this country, and I must congratulate the Hon'ble Finance Minister upon his careful management of this very important department of the State, no

less than on his masterly exposition and happy forecast of the financial position of the Empire.

"It will no doubt be gratifying to Your Excellency's Government to have already been able partially to restore the Famine Grant, with the prospect of the complete restoration within no immeasurable distance of time. Indeed, by the light of the explanation which occurs in paragraph 20 of the Financial Statement, one may not unreasonably expect that the Famine Grant for the years 1889-90 and 1890-91 will be more than restored by the end of the next financial year.

"My Lord, it will be in the recollection of Your Excellency that last year from my place in this Council I addressed a prayer for the relief of such tax-payers of all denominations under the Income-tax Act whose annual income varies from Rs. 500 to Rs. 1,000. I fully explained how hard the tax pressed on these poor people. That prayer did not meet with a favourable response, and I should have hesitated much before I could gather courage to renew my appeal; but, with the present Financial Statement before me and the happy augury for the future, I once more venture to renew my application. It is particularly encouraging to note the following paragraph in the Financial Statement:—

'There are therefore strong grounds for holding that in 1891-92 we shall at least find ourselves in a position of comparative ease, with a surplus in hand, moderate in amount, but sufficient to allow of some improvement in financial conditions.'

"I sincerely hope that no unforeseen event or adverse circumstance may overtake these expectations and the surplus of the coming year may grow with the same leaps and bounds as in the present year. In the full belief in the justice of the cause I have undertaken to advocate, and in the moderation of my request, I earnestly implore that Your Excellency's Government will be pleased to grant the relief I have asked for, by taking an early opportunity to exempt all annual income below Rs. 1,000 from the operation of the Income-tax Law."

His Honour THE LIEUTENANT-GOVERNOR said:—"I have to join the general chorus of congratulation to the Hon'ble the Financial Member on the successful Budget which he has laid before the Council, and on the exceeding lucidity with which he has explained it; but I hope he will not take it ill if I introduce the little rift in the lute upon one single point in which I am glad to find that I have already been to a very great extent discounted by the Hon'ble Mr. Evans. I need not tell you that I refer to the contributions—the enforced benevolences—which were taken from the Provincial Governments during the current year. It is scarcely necessary I should remind the Council of the state of affairs which led to this contribution. This time last year the expectations founded upon the regular estimates of the year then current, and upon the Budget esti-

mates of the year which is now closing, were both rather sad. It was supposed that it was difficult to make both ends meet, and a sum of nearly fifty lakhs had to be levied by contributions from the Provincial Governments, and even including that contribution the estimated surplus was only £106,000. Well, under the circumstances, the Local Governments were called upon to contribute, and they did contribute. The share of the Bengal Government was ten lakhs, and, as I had occasion to say, it was contributed with very great difficulty. Our contract had not proved a very profitable one, that is to say, we have had extreme difficulties to contend with in Bengal. We have spent large sums of money in famine expenses, and our receipts, specially in the department of excise, have diminished very considerably; and the result is we were able only with considerable difficulty, by refusing the most reasonable requests, by, as my Hon'ble friend said, starving the administration, to show in our Budget the necessary surplus which the Secretary of State does not allow us to fall below, namely, twenty lakhs. In other words, we have had nothing absolutely to spend upon any fresh developments, or anything beyond the maintenance of things as they are. It was no doubt perfectly right and proper that, in the state of affairs as they were then described, the Local Governments all round should be called upon to assist the Imperial Government. I think it was generally accepted, and I do not know whether there was a dissentient voice; but it was just and proper only because the state of affairs in which the Government of India stood financially seemed to be a very grave and difficult one. Now, the whole forecast of that period has been happily dispelled. Instead of a nominal surplus of £106,000, we look forward to an actual surplus of $2\frac{3}{4}$ millions. Under these circumstances I certainly should have expected that the first thing which would occur to my Hon'ble friend in charge of the finances would be to consider, 'ought we not to give back the money we have taken from the Provincial Governments?' I find in his Budget Statement nothing which shows this, nothing to show that the idea of restitution had ever come under his consideration: on the contrary, the whole amount is deliberately retained to swell a surplus already so large that for very decency it is spread over two years, and the money is to be devoted to reviving the policy of what is called the Famine Grant, and partly to assist in paying in one year for the very large cost of re-arming the army. Now, what I venture to say is that, had the state of things which exists now been known a year ago, had my Hon'ble friend known that he would have this huge surplus, and that, so far from wanting to make both ends meet, it would seem difficult to dispose of the surplus, I feel sure it would never have occurred to him to ask for this contribution from the Local

Governments; because, though it is perfectly right that those Governments should contribute in times of grave crisis to the Imperial Government, yet it must be admitted that to take a contribution under any circumstances from a Provincial Government during the period of contract cuts at the basis on which that contract system is founded. The theory of the contract is that certain charges and receipts are made over to a Local Government in such a way as to balance each other, and, if the Government by good management or other circumstances succeeds in saving anything on one side, it is at liberty to devote that sum to developing and improving its administration on the other. Consequently, when under the stress of necessity the Imperial Government comes down upon the Local Government and takes away its small accumulations, it breaks down the whole object for which this contract system was established. It takes away from the Local Government all impulse for accumulating its reserves when it finds that, as soon as it has done that, the money is spent upon some other purpose with which it has no concern. Therefore, I think I may say without hesitation that it would not have occurred to the Hon'ble the Financial Member, had the circumstances as they now are been foreseen a year ago, to have asked for this contribution; and, if that is so, there is no reason why the money, which was taken under one set of circumstances, should not under another set be now returned, and that that which was taken under a misapprehension, which is now made clear, restored. It may be said that there will be inconvenience in doing this. I am not, of course, in the best position to judge of the force of this argument, but I think that, so far as the money devoted to the Famine Grant is concerned, the inconvenience is not very serious. As to the Famine Grant—here I may be allowed to offer my congratulations to the Hon'ble the Finance Member for having done much to dissipate the absurd ideas which still float about occasionally in the Press as to the meaning and history of the Grant, and to render it impossible for any one to talk hereafter about malversation and misappropriation, as if the money was put into a separate purse—I fully appreciate the policy of devoting in times of surplus sums of money both to diminishing debt and also to expenditure upon unproductive but protective railways. Still I do not think that, when a sum of four millions is so devoted, there should be much difficulty in restoring the half million which was substantially received from the Local Governments. I can only ask the Hon'ble Member to recollect that the loss of the sum which was contributed by my Government is a very serious deficiency indeed, and puts us to grave inconvenience. It prevents us from doing much that we ought to do. We want every rupee we can collect, for, as matters stand, we are prevented by our poverty

from answering the complaint of the High Court as to the paucity of Judges and the want of judicial establishments. We are prevented from improving the police in the way the Government of India have asked us to improve it, and are unable even to maintain our necessary public works in a proper state of repair. I can only therefore ask the Hon'ble Member to consider the possibility of restoring to us the contribution which we have made, and I can assure him that it will be an important boon at least to the Government over which I preside.

"There was another point which was alluded to by the Hon'ble Mr. Evans, and on which I should be glad if I were able to give him the information he wants. It was in reference to the Commission which was appointed to enquire into the sufficiency of Munsifs and judicial establishments. The Commission was divided into two parts—one to enquire into the sufficiency of Munsifs, and the other into the needs of judicial establishments. The report on the first point was sent in to the High Court a few months ago, but has not yet come to me, and the enquiry into the other is still going on, and is not yet complete. It is therefore out of my power to give any information as to what has been recommended, but I can assure him that we shall be quite ready to carry out any recommendations that may be approved and may be financially feasible, without any avoidable delay."

The Hon'ble MR. HUTCHINS said:—"The Hon'ble Mr. Evans was good enough to inform me that he would again draw attention, as he did last year, to the obligation which attaches to the Government to supply more tribunals to cope with the ever-increasing litigation of Bengal. I have therefore on this occasion brought with me the Resolution on the subject which the Government of India issued early in March of last year. At that time the High Court had reported that a large number of additional Courts were required—as many as 66 Munsifs and 6 Subordinate Judges. Their representations had been referred to the Local Government, and His Honour had questioned the conclusiveness of the statistical argument by which the High Court supported its demand,

'and, while not withholding his concurrence from the view that some increase in the Civil Judicial staff was necessary, has called attention to the expense which would be entailed by increasing the staff in proportion to the 'progressive fecundity of litigation' and to the necessity to which this consideration pointed of devising some other methods of coping with the increased judicial business of the country.'

"The letter containing these remarks bears date 24th October, 1888, that is to say, some months before the Conference at which it was decided, among

other things, that the existing contracts should not be interfered with and that Bengal should contribute to Imperial funds a lump sum of 10 lakhs. I took up this financial objection first, and the Resolution deals with it in these terms :—

'The first question was of a preliminary character, namely, the question whether, in point of fact, substantial grounds existed for the apprehension felt by the Bengal Government that the provision of Courts in proportion to the growth of legal business would throw upon the Provincial Revenues an undue financial burden. An examination of this matter has satisfied His Excellency in Council that there is at the present time no substantial basis for any such apprehension in Bengal. An addition to the number of Courts in proportion to the work to be done has hitherto been beneficial to the provincial finances in Bengal, while it has also been advantageous to the people, and the Governor General in Council sees in the circumstances disclosed in this correspondence no reason to think that, for some time to come at all events, this state of things should not continue. Apart from this consideration, however, it is, in the opinion of the Government of India, the duty of the Local Government to provide as many Courts as may be proved to be necessary for the disposal of the business brought before them.'

In other words, we came to the conclusion that probably every additional Court would go far to pay its expenses, and that, whether this may be so or not, whatever number of Courts is really required must be supplied. It will be evident, therefore, that it was no mere financial consideration which stood in the way of an immediate concession of all that the High Court demanded, but, after examining the grounds upon which that demand was based, I was not satisfied that there was not in many Districts a considerable waste of judicial power, and that their necessities, as the Resolution puts it,

'could not be met more economically by investing the existing or even in some cases a less number of Courts with extended or more summary powers, or by dividing the time of Subordinate or Additional Judges between two or more districts.'

"I was not without experience in such matters, as I had been through a very similar phase of controversy in the Madras Presidency, and I found that in many places in Bengal ordinary Small Causes were still tried with all the elaborate procedure applicable to regular suits, that the statutory power to confer higher jurisdiction on selected Munsifs had never been exercised, and that the power to authorize the summary disposal, as Small Causes, of suits relating to rent had also remained a dead letter. I am quite aware that, as my Hon'ble friend has stated, some rent-suits may raise difficult questions, but at all events in many of the districts the great majority are of the simplest character possible. This was just one of the questions which the Commissioner was appointed to con-

sider—are there no Districts in which rent-suits can safely be tried as Small Causes and with a summary procedure?

"In these circumstances the Government of India could not but admit that His Honour had some ground for hesitating to accept the High Court's estimate of actual requirements, and we resolved to appoint a special officer of experience, selected by the Court, to aid the Chief Justice and Judges by carrying out that detailed scrutiny of the position and wants of different districts for which their Lordships themselves could not possibly find time, having regard to their other arduous and important functions. Meanwhile and, as His Honour explained last year, as a provisional arrangement, simply to keep down arrears pending the enquiry, we sanctioned the continuous employment first of 30 additional Munsifs and 3 Subordinate Judges, and subsequently of 6 more Munsifs besides 4 Subordinate Judges for different temporary periods. In other words, we have given 36 Munsifs and 7 Subordinate Judges against the High Court's estimate of 66 Munsifs and 6 Subordinate Judges and against the Lieutenant-Governor's offer of 33 Munsifs and 5 Subordinate Judges as the utmost to which he could see his way to consent.

"I regret quite as much as the Hon'ble Mr. Evans that the final settlement of this matter is still in abeyance. The report of the special officer was submitted to the High Court in November last, but, as I have already observed, their Lordships' ordinary work is of a very engrossing character and the report raises a number of local questions. Pending their consideration of the report and pending the submission of the remarks which I have reason to expect the High Court will make on the necessity of large expenditure on Court buildings and other accessories, I cannot discuss the matter further; but I may mention that the report so far justifies our anticipations that, although it seems to me to have been framed on liberal lines, it calculates the present need to be 52 Munsifs and 3 Subordinate Judges against the original estimate of 66 Munsifs and 6 Subordinate Judges, although it includes 5 Munsifs for places at which the High Court, writing in August, 1887, had not considered that further assistance was necessary. If then the report is accepted by the High Court, 16 new Munsifs will be required and the immediate additional cost will be about Rs. 7,000 monthly, a great part, if not the whole, of which will be met by additional fees on the new suits instituted. The Hon'ble Member has remarked on the inefficiency of the subordinate establishments. As has been explained by His Honour, the same Commissioner with an executive officer has been ordered to examine into this matter also; but I do not think his report has yet been submitted. All I can say is that no one can

possibly feel more strongly than myself, as every one in Madras well knows, that judicial establishments ought to be strengthened and made as effective as possible. My Hon'ble friend also suggested that we might have allowed more than the 36 Munsifs in the interval pending consideration of the report. I am, however, glad to say that arrears have not increased in this interval, but rather the reverse. So at least I gathered from the report at a first and somewhat cursory perusal.

"Perhaps I may add a few more words with reference to what has fallen from the Hon'ble Mr. Nulkar on the subject of uncovenanted pensions. The Government of India has all along consistently maintained (1) that the Uncovenanted Service has no legal ground whatever for demanding sterling pensions, and (2) that if they have any equitable ground for complaint their grievances ought to be laid before Parliament and, if necessary, investigated by a Select Committee. The absolute correctness of our opinion on the legal merits of the case has now been admitted on all sides. It would be obviously improper for any member of the Government of India at the present time to enter into any discussion of the other grounds on which the claim now stands. These are *sub judice*, and before long will be fully heard and considered by an impartial Parliamentary Committee. I have no doubt that the Hon'ble Member's observations will be read by every member of the Committee, and will receive from them all the consideration which they may be thought to deserve. The Hon'ble Member made some further remarks on the result of the Public Service Commission, but I did not quite see how they were appropriate to this occasion; indeed, I rather think they were out of order. For that reason I do not propose to discuss that subject at present, but will content myself with saying that I think the instructions received from the Secretary of State will bring about, tentatively and by degrees, very nearly the same state of things which the Commission desired to introduce by an alteration of the law."

The Hon'ble SIR DAVID BARBOUR said:—"The Hon'ble Mr. Nulkar has complained of the very limited information given in the Financial Statement regarding the Home expenditure, which is under the direct control of the Secretary of State. He has said that the information given in the Statement is confined to two vague entries of 'Bills drawn by the Secretary of State' and 'paid'. In this there is some misapprehension. The information given in the Financial Statement regarding the Home expenditure is precisely as full as the information given regarding the expenditure in India. If the Hon'ble Mr. Nulkar will turn to Statement B he will find the whole of the English expenditure classified

under the very same heads under which the Indian expenditure is classified. It is quite true that neither the Indian nor the English expenditure is set out in great detail in the Financial Statement, but it was never intended that this should be done, and it would be very inconvenient to do so. As it is, the Financial Statement is sufficiently bulky and complex, and I should be sorry to do anything that would add to the difficulty of mastering it. But, though I cannot undertake to set out either the Indian or the English accounts in detail in the Financial Statement, it is, of course, essential that full information on the subject should be available for the public. As matters now stand, such information is available. The Indian accounts will be found in detail in the Finance and Revenue Accounts of the Government of India, a book commonly known as the Yellow Book, published every year, and comprising nearly 250 pages of printed matter of foolscap size. The accounts and estimates of the Home expenditure, which are presented to Parliament and are published as a Parliamentary paper, contain complete information regarding the revenue and expenditure in England. They are published in May of each year, and are received in this country in June or July. They are quite as voluminous as the whole of the present Financial Statement, and they can be consulted by anybody who takes an interest in them.

"Another complaint made by the Hon'ble Mr. Nulkar is that he has not had sufficient time to study the Financial Statement so as to criticise it effectively. The object of the Financial Statement is to explain the general financial position, to set forth the financial policy of Government, and to indicate the nature of any changes which it is proposed to make, and which have a bearing on the finances. It does not profess to set forth the accounts in full detail, or to contain complete information on every branch of the administration. For criticising the general financial position and policy of Government, and the expediency of any new measures which it is proposed to take, a week's study of the Statement appears to me ample, and more than ample. But of course it is not sufficient to enable a person who is new to the subject to master the whole question of the Home charges. The question of the adjustment between the Indian and the English Governments of charges in connection with the portion of the British Army employed in India is excessively complicated and difficult, and the literature of the subject is very extensive. Many Committees have dealt with this question in the past; it has repeatedly been the subject of lengthy correspondence between the Government of India and the Secretary of State, and it is continually under discussion by the India Office, the War Office and the Treasury.

"I should be glad if the Hon'ble Mr. Nulkar could find time to go into the question thoroughly, but for any proper discussion it is necessary that he should be thoroughly acquainted with the question beforehand, and not begin the study at the last moment when the Financial Statement is presented. It is needless to say that it would be a very acceptable result if his labours should lead to a material reduction of the charges made against India on account of the portion of the British Army employed in India. The question has been discussed again and again by men of great ability and special knowledge of the subject during the last thirty years. Since 1879 a Commission has been considering it under presidency of Lord Northbrook, whose presence on the Committee is a guarantee that the interests of India are not being neglected.

"The Hon'ble Mr. Evans has referred to certain arrear charges which we have had to meet on account of British troops. I am speaking from recollection merely, but I do not think these charges arose in the way in which he supposes. I do not think it is the case that a change was made in the mode of calculating the charge, that the change was applied retrospectively, and that consequently we were called upon to pay in respect of years of which the accounts had been closed.

"I believe the arrears arose in this way. The calculations by which the charges are determined are extremely complicated. It was impossible to determine the amount of these charges before the close of the years to which they referred. Consequently, the India Office only paid certain sums on account, and when the calculations were completed it was found that the sums paid on account did not suffice to meet the charges. In this way the arrears arose. What the Hon'ble Mr. Nulkar has said this year, and what the Hon'ble Mr. Evans has said both this year and last year, show that a considerable interest is taken in the Home charges. The question of the adjustments on account of British troops employed in India is one of the most difficult with which I have ever had to deal, but I will look through the correspondence, and if I find that there is any correspondence or other papers that might with advantage be made public, I will propose, with Your Excellency's permission, that they be published in the Gazette of India.

"The Hon'ble Mr. Evans and the Hon'ble Sir Steuart Bayley have urged with much ingenuity and great earnestness that the contribution of ten lakhs given by Bengal should be restored. It is probably true, as they urge, that, if we could have foreseen last year that 1889-90 would end with a considerable

surplus, we should not have asked for these contributions; but I do not think it necessarily follows that they should now be restored. In the first place, the value to the Bengal Government of the ten lakhs which it contributed appears to me to be exaggerated. It was not a contribution of ten lakhs yearly, but of ten lakhs once for all, or say 1,000,000 of rupees. Bengal contains about 70,000,000 of inhabitants, and I really do not think that an addition to the resources of the Bengal Government of a sum of one rupee for every 70 inhabitants would have added so much to the welfare and happiness of the people as appears to be supposed. The total amount is less than one pice per head of population, and I do not think that the loss of such a sum could materially affect the to-being of the people or the efficiency of the administration. In particular, I do not think that the Bengal Government has been prevented from carrying out the recommendations of the High Court by the want of this money. I have always understood that the question of money did not stand in the way, and that the recommendations were not adopted fully and at once because it was not admitted that the whole of the changes proposed were necessary. I may be mistaken, but the question would assume an entirely new aspect if it were understood that the recommendations were just and proper in every way, and that they had not been completely carried out simply because there was no money.

"But, whether the amount be great or small, the question is really one of principle, and as such I am content to deal with it.

"I am afraid that in politics memories are short and gratitude not common. I would ask the Council to recall what was the position some sixteen months ago. It was then not a question of exacting a contribution once for all, but of tearing up the existing contracts, demanding a yearly contribution from each Local Government and introducing a system under which the Local Governments would be called on to contribute, as a matter of course, in case of need, to the wants of the Government of India, while the Government of India was to be in the comfortable position of deciding for itself when the period of need had arrived. Strong objections to this change were raised by the Local Governments. As a compromise, it was arranged that the Local Government should pay certain sums once for all, and that the other questions should stand over for future discussion and settlement. All prospect of any such interference with Local Governments as was proposed 16 months ago has now disappeared. I am glad that this is the case, and I think the Local Governments have gained greatly thereby. I think we may fairly look on the payment made by Bengal, as a payment made by way of compromise, and not as a payment made under a misap-

prehension. By that compromise Local Governments have obtained very great advantages. The representatives of these Governments should recollect that they have not been deprived of their share of the recent prosperity. Their revenues have increased, and they are no longer in danger as regards their contracts. Bengal is the only Government whose finances, so far as I am aware, are not in a flourishing position, but I would ask the Bengal Government to recollect that the payment it had to make was comparatively light, much smaller than that of Madras or Bombay, and that Bengal is the most lightly-taxed province in the empire.

"I look upon the gradual strengthening of the Local Governments as the most important of the future reforms in Indian administration. It is in my opinion an evil of the first magnitude when the provincial contracts are interfered with, and I hope no such interference will ever take place except on grounds of clear necessity. I do not wonder that Local Governments object to such interference, and it would be a portent of evil omen when they ceased to do so, because it would show that they had ceased to take an interest in the provinces committed to their charge. And as I am opposed to any hasty interference with Local Governments, so I am opposed to any reversal of such interference when it has once taken place. The exaction of a contribution from a Local Government is too serious a matter to be lightly undertaken when the Government of India is in want and as lightly reversed when things take a turn for the better.

"It must also be recollected that, if we had returned their contributions to Local Governments, we could not have taken credit in 1890-91 for the sum of Rx. 490,000, which has just enabled us to restore partially the Famine Grant in that year. I think this is a consideration to which weight must be attached. It was very desirable to make a beginning in this matter and thereby formally commit Government to the carrying out, as soon as possible, of a policy which has met with general approbation.

"The Hon'ble Mr. Evans expressed some diffidence as to his judgment on matters of finance. I think this was unnecessary. I have never known anybody who more clearly apprehended the fact that the Famine Grant was simply a surplus, and I have never known the case stated more accurately, or as clearly as he stated it to-day. I unreservedly accept his argument on this point, but at the same time I do not agree with him in holding that the Famine Grant ought to disappear and that we should simply show a large surplus. A somewhat

similar opinion was expressed by the Hon'ble Rájá Durga Charn Laha when he said that the Famine Grant should be simply called a Reserve Fund or Grant to be drawn on whenever the difficulties of the Government of India rendered it expedient to do so.

"The Hon'ble Rájá Durga Charn Laha speaks from experience of the nature of the Famine Grant, and his opinion has great weight with me.

"In principle I accept the soundness of his argument, and of that of the Hon'ble Mr. Evans, but there are certain infirmities of human nature which in practice make it expedient to maintain the Famine Grant. If we showed a large surplus every year, I am afraid we could not resist the attacks that would be made on it. The most convincing arguments would be brought forward to show that this or that proposed scheme for expenditure was of the most valuable character, and sooner or later, and probably sooner rather than later, the surplus would be eaten away.

"And if we called the Famine Grant a Reserve Fund, and acknowledged that it might be broken into when difficulties arose, I am afraid difficulties would be of very common occurrence, and might even be created for the purpose of getting hold of the money. It seems to me that the safest and only method of safeguarding our surplus is to call it a Famine Grant, and in this way to ensure that its absorption shall not be effected except as a deliberate act of State policy which will attract public attention, and must be justified by very strong arguments.

"For this reason I am opposed to any change in the existing practice.

"In the Financial Statement I used the following words:—

"'There are, therefore, strong grounds for holding that in 1891-92 we shall at least find ourselves in a position of comparative ease, with a surplus on hand, moderate in amount, but sufficient to allow of some improvement in financial conditions.'

"It has been assumed in some quarters that these words foreshadowed a remission of taxation in 1891-92. I am sorry to dispel so pleasing an illusion, but I think it necessary to say that to the best of my judgment we shall not be in a position to remit taxation in 1891-92.

"The words I have quoted refer to the possibility of our being able to maintain in 1891-92 the partial restoration of the Famine Grant which has been carried out this year, and it may be to go a little further in the same direction. It is

known to the Members of this Council that the special credit of Rx. 490,000 which we are to receive in 1890-91 will not be forthcoming in 1891-92, and, in order to maintain in 1891-92 the Famine Grant at the amount fixed for 1890-91, there must be an improvement within twelve months of Rx. 490,000, while in order to raise the Famine Grant in 1891-92 to the full amount of Rx. 1,500,000 there must be a further improvement of Rx. 467,200. The total improvement required to admit of the Famine Grant being raised to its full amount in 1891-92 is, consequently, Rx. 957,200. I doubt if the improvement will be so much, and, in any case, it would be rash in the extreme to assume that the improvement will exceed this amount, and yet, unless the improvement materially exceeds Rx. 957,200, there can be no remission of taxation in 1891-92.

"I am afraid that the state of things I have just described would of itself be fatal to the appeal so earnestly made by the Hon'ble Syud Ameer Hossein that all incomes below Rs. 1,000 should be exempted from the income-tax; but, apart from this aspect of the question, I should like to make a few remarks on the merits of the case. In the first place, I would observe that the Government of India has not got an inexhaustible treasury on which it can draw at discretion for the purpose of remitting taxation. If taxation is remitted for one class, either an equal amount of taxation must be imposed on some other class, or a class which would otherwise have been relieved must continue to bear its burden. Judging by the standard of this country, I cannot admit that persons having an income of from Rs. 500 to Rs. 1,000 are poor people in the sense of being people who ought to be relieved from moderate taxation on the ground of their extreme poverty. Their income is from Rs. 40 to Rs. 80 a month, and I am afraid that that is a comparatively good income in this country. The question, then, becomes a very simple one. Is it desirable to raise the assessable minimum of income and to retain the salt-tax at its present figure? In other words, should we relieve the men whose incomes range from Rs. 40 to Rs. 80 a month, and throw the burden on men whose incomes range from Rs. 4 to Rs. 8 a month? There can, I think, be but one answer to such a question, and, highly as I value the opinion of my Hon'ble friend, I am afraid the proposal he makes is not within the range of practical politics at the present time.

"There is, however, one good argument in favour of the course he suggests. To raise the limit to Rs. 1,000 would avoid the necessity of making a very great number of assessments without proportionately reducing the revenue. I quite admit the force of this argument, and can only regret that other considerations prevent the Government from looking on it as conclusive.

"There is another point on which I desire to offer a word of explanation. It has been alleged that certain information leaked out of the Government offices in connection with the Financial Statement, and that unscrupulous persons took unfair advantage of the information which they had acquired by improper means. There can be no doubt that information has more than once leaked out of Government offices, but it is most difficult to prevent this from happening. More than one newspaper has published information which was improperly obtained and which it knew to be improperly obtained, and I am afraid that there does not exist in some quarters a very high sense of honour in such matters. In the present case it has been alleged that information was improperly obtained regarding the fact that there would be no loan in India next year, and regarding the proposal to raise the rate of duty on imported spirits. Taking the second of these matters in the first place, I wish to mention that the proposal to raise the rate of duty was made a good many months ago by the Secretary of State. The question was considered by all the Local Governments and their responsible advisers in such matters, and rumours of the proposal found their way into the Press. When a proposal has to be discussed by every Local Government in India and by the officials subordinate to each Government, I am afraid there is not much chance of preserving complete secrecy. I first noticed the rumours in a paper published at Lahore. But much harm was not done, because it had not then been decided at what date the duty would be raised, or whether it would be raised at all or not. The decision to raise the duty at once was only arrived at quite recently. It had to be communicated to the Secretary of State, and the amount of revenue expected had to be entered in the estimates, but special precautions to ensure secrecy were taken. I cannot say if they were completely successful, but I have ascertained from the Collector of Customs that very little spirit was taken out of bond before the duty was raised. In fact, only one firm appears to have withdrawn spirit largely just before the duty was raised. The amount so withdrawn was 1,498 gallons, but, as there were 26,121 gallons of spirit, excluding liqueurs, in bond at the time, it would seem that the secret was not badly kept. I cannot say whether the firm in question received information unfairly or not. It may have had such information, or it may have noticed the rumour that appeared in the Press long before, and have withdrawn the spirit on speculation Assuming that it received information unfairly, the loss of revenue is about Rs. 1,500. I regret that even this amount of revenue should be lost owing to underhand practices, but, considering that the change in the rate of duty will bring in nine lakhs yearly, that rumours of a proposed increase of duty had appeared in the Press some

months ago, and that we might have lost the extra duty on the whole of the spirit in bond, which would have amounted to about Rs. 26,000 in Calcutta alone, I think we have some reason to congratulate ourselves on the result.

"In the case of the loan it was more difficult to preserve the secret. The high cash balances naturally attracted the attention of speculators to the matter; and a speculator who had been paying attention to the state of the Secretary of State's drawings, to the high cash balance, and to the published accounts of revenue and expenditure, could have inferred, with some confidence, that either there would be no loan in India or that it would be a small one. The calculation by which it is finally decided whether a loan is necessary or not is an intricate one in the preparation of which a number of officers take part. When a decision has been come to on the question it is necessary to make the proper entries in the estimates. The estimates pass through a number of hands, and have to be printed, and consequently information may be given by any one of a number of officers, if anybody is so dishonourable as to be willing to do so. I do not, however, think that much harm, if any, was done in the present case, as the decision not to borrow was come to only a short time before the fact was publicly announced, and I apprehend that dealers in Government paper are rather cautious in their dealings just before the Financial Statement is issued, while those who speculate at such a time do so with their eyes open to the risks they run. I can only say that, if the charge of giving information for purposes of speculation is brought home to any official, he will not be given an opportunity of betraying the trust reposed in him a second time."

His Excellency THE PRESIDENT said:—

"We have again taken advantage of the passing of a small and comparatively unimportant measure affecting the Imperial Finances in order to give Hon'ble Members an opportunity of considering and criticising the general financial policy of the Government of India. It will be in the recollection of the Council that, when, twelve months ago, a similar opportunity was contrived, I was able to state that, in our opinion, the time had come when the right of discussing the Budget should be secured to the Legislative Council, and when the exercise of that right should no longer depend upon casual facilities such as we have been able to afford this year and last. I stated that this view was shared by Her Majesty's Government, and that the Secretary of State had expressed his concurrence in our proposal that there should be an annual, instead of an occasional,

discussion of the Budget in Council. I added that this subject appeared to us, and also to Her Majesty's Government, to be closely connected with another, namely, the propriety of giving to Members of the Legislative Council of the Government of India, under proper safeguards, the right of addressing questions to the Government upon matters of public interest, and I stated that this subject also was engaging our attention and that of the Secretary of State. Since I made this announcement, steps have been taken to make good the assurance which I was then able to give. I was not without hopes that the legislation necessary for the purpose of carrying out these important constitutional changes might have been passed last year, and that we might, ere now, have been engaged in the task of considering the regulations under which these newly-acquired rights might be exercised. The Secretary of State was fully prepared to introduce the measure during the Parliamentary session of 1889. Hon'ble Members, however, are aware of the difficulties which attend Imperial legislation, and cannot have been surprised, even if they were disappointed, to find that the attempt to pass a Councils Bill during the session of 1889 was abandoned. A Bill is, as Hon'ble Members are aware, now before Parliament. It contains provisions which will be effectual for the purpose of redeeming the pledges given last year, and I earnestly trust that it may become law before the session terminates. This is, I need not say, not a proper occasion for discussing the other provisions of the Bill, with which Hon'ble Members are no doubt familiar—provisions which affect the composition of this and of the Provincial Legislative Councils. I venture, however, to express my hope that too much credence will not be attached to the wholly unauthorized rumours, which are circulated from time to time, in regard to the attitude of the present Government of India towards this most important constitutional question. For the opinions expressed by us in the correspondence which the Secretary of State has thought proper to lay before Parliament we accept the fullest responsibility. For other opinions, confidently attributed to us, but not, so far as I am aware, disclosed in any statement of our views, official or unofficial, which has been given to the public, we disclaim all responsibility.

"I will only add that I earnestly trust that even those who would themselves desire to see a scheme more ambitious and far-reaching than that of the Secretary of State adopted by the Government of India and by Her Majesty's Government will not, for that reason, allow themselves to be led to disparage unjustly the measure which has lately been passed by the House of Lords—a measure which I honestly believe marks one of the greatest advances which has

been made for many years past in the direction of a liberal reform of our institutions.

"It will not be necessary for me to take up the time of the Council with any lengthened observations upon the Financial Statement of the Hon'ble Member. I feel sure that I am only expressing the opinion of my colleagues when I say that we have listened to it with feelings of much satisfaction. I should be sorry to allow myself to be drawn into an over-sanguine estimate of our financial situation in the future. Such anticipations are always dangerous; they are particularly dangerous in India, a country in which a portion at all events of the population can never be regarded as wholly beyond the reach of disasters involving the financial position of the Government for the time being. I think, however, that we may, without erring in this respect, say that our present situation is eminently hopeful, and that signs are not wanting to show that we are at last emerging from that series of lean years through which we have travelled with so much anxiety of late. The steady increase in the volume of our trade, in the amount of the receipts from most of our railways, and in our income from land-revenue and from the principal heads of taxation, all point to the approach of a time when we shall have less cause for anxiety than we have had for some time past.

"The proposals of the Hon'ble the Financial Member are simple and intelligible. There is no occasion for seeking new sources of Imperial revenue. The measure now before us, which adds a comparatively insignificant sum to our income, is to be justified on political, rather than on financial, grounds.

"Some complaint has been made of us because we have not at once taken advantage of the first symptoms of returning prosperity in order to remit taxation. Those by whom this complaint is made can, I venture to think, not have thoroughly realised our position. The Hon'ble Mr. Nulkar referred to the reduction of the Salt-duty and to the question of raising the minimum at which incomes are liable to be taxed. The reduction of the Salt-duty by 8 annas to Rs. 2, the rate at which it stood until the beginning of 1888, would involve a sacrifice of revenue to the extent of about Rx. 1,500,000. The raising of the taxable minimum of incomes from Rs. 500 to Rs. 1,000 would cost us about Rx. 300,000. It might perhaps have been possible for us to reduce taxation under one or other of these heads, and yet to make both ends meet in the financial year upon which we are about to enter. I hope, however, it will not be contended in this room that it is the duty of the Government of India

at once to remove taxation merely because it happens for the moment to have at its command resources which would permit it to adopt such a course. The removal of an existing tax is very nearly as serious a matter as the imposition of a new one. A Government has no right to abandon revenue until it has a reasonable certainty that, at all events as far as it is able to foresee the future, it will be able to dispense with that revenue. A policy which would impose taxes one year and remove them the next because there was a break in the clouds, with the prospect of being compelled to re-impose them immediately afterwards, is not worthy of the name of a policy, and would be fatal not only to the stability of our finances but to the comfort and convenience of the public. We are, I believe, not yet in a position permanently to abandon revenue to the extent involved in any of the above proposals. It may be that the time will come when we shall be able to consider them favourably, and when that time comes the Hon'ble the Financial Member will no doubt bear in mind the recommendations to which we have listened. That time has, however, not come yet.

"I venture, however, to go further and to say that, even if our prospects were better assured than I believe them to be, even if we were in no doubt as to the future of Exchange, even if our income from Opium were less precarious than it unfortunately is, the Hon'ble the Financial Member deserves to be supported in his determination to give the first place, not to small remissions of taxation, but to the restoration of the annual provision which, under the arrangement come to twelve years ago, it was decided to make as a national insurance against famine. It has always seemed to me that that was an eminently sound and prudent policy, in pursuance of which the Government of India determined to make every year a fixed provision for the purpose of enabling the country to meet the recurrent strain to which its finances have from time to time been exposed from failure of crops involving failure of revenue, or direct expenditure in relief. It is not necessary for me to add to what the Hon'ble Member has said in regard to the misconceptions into which the public mind has fallen—misconceptions which, I am afraid, have not been yet entirely removed—in regard to the nature of this arrangement and the uses to which the funds provided under it may legitimately be put. I wish, however, to express my adhesion to the principle upon which the Hon'ble Member has acted, and to say that I think with him that, now that we find ourselves able to dispose of surplus revenues, our first duty is to use them for the purpose of restoring the annual Famine grant. I trust that nothing may occur to prevent those who are respon-

sible for the Government of India from henceforth giving effect to the wise intentions of our predecessors, and so regulating the income and expenditure of the Imperial Government that the pressure of the bad years may always be to some extent relieved out of the affluence of the good. It was only in consequence of exceptional pressure, only because its poverty, and not its will, consented, that the Government of India found itself constrained during the last few years to cease from making this annual provision; and, considering the nature of the taxation to which it had become necessary to resort, I do not think it will seriously be argued that, in preferring a temporary suspension of the arrangements for insurance against famine to the imposition of additional taxation, Lord Dufferin's Government did not exercise a wise choice. Our first duty, now that we find ourselves face to face with a more promising condition of affairs, is to revert to the sound policy instituted by our predecessors, and to endeavour in each year to provide out of our current revenues a substantial sum to be applied towards the alleviation of the permanent financial liabilities of the State. I trust that a considerable portion at all events of the sum thus appropriated may be applied to the construction of railways which, under less fortunate circumstances, might have remained unbuilt, or for which it might have been necessary to provide capital out of borrowed funds—railways the construction of which will not only bring a direct return to the national Exchequer, but also afford increased security to a part of the people of this country against risk from famine. I was not able to follow exactly the argument of the Hon'ble Mr. Evans, which had reference rather to the manner in which this portion of the accounts was shown. I venture, however, to think that, if we have regard to the essence of the transaction, we are entitled to say that by thus applying our revenues either in diminution of existing debt, or in avoiding the necessity of adding to it, we shall permanently strengthen our finances and, in the truest sense of the word, make provision for insurance against famine.

"Of the duties which the Government of India owes to the tax-payers of the country, the duty of, as far as possible, avoiding an increase of the national indebtedness is one of the most binding. Whatever may be our apprehensions with regard to the future, we have at least the consolation of knowing that the indebtedness of India has, up to the present, been kept within the most moderate limits, and that the burden of that indebtedness is fortunately tending to diminish, and not to increase. I do not know whether Hon'ble Members have had time to refer to the extremely interesting paragraph which appears under the heading of 'Interest on Debt' at page 25 of the Statement which lies upon the table. If they have done so, they will no doubt have observed the following facts which appear to me to deserve special attention.

"Our total indebtedness in sterling at the end of the present year amounts in round numbers to 98 millions sterling, of which no less than 32 millions was borrowed on account of Railways and other profitable enterprises. When we remember that, of the 66 millions which remain, between 40 and 50 millions were incurred at the time of the Mutiny, we shall, I think, congratulate ourselves that the obligat ions which we haveinherited are not heavier.

"Turning from the sterling debt to our indebtedness in rupees, it appears from the statistics given at page 26 that by far the greater portion of that debt, or Rx. 96 millions out of Rx. 113 millions, is represented by Railways and Irrigation Works. Of the interest for which we shall be liable next year, and which will amount altogether to Rx. 4,671,000, Rx. 4,000,000 in round numbers are chargeable to interest on Railways and Irrigation Works: in other words, considerably more than three-quarters of the whole of our rupee debt represents expenditure upon remunerative enterprises for which the State obtains a fair return, or for which, at all events, we have valuable assets to show. The balance, which may be stated in round numbers at Rx. 700,000, represents the ordinary rupee debt of India. This, however, includes sums which have from time to time been advanced by the Government of India to public bodies, or sums held by the Government as currency investments. The amount annually recovered from the persons or Corporations to whom money has thus been advanced has, year after year, tended to bear a larger proportion to that for which the Government of India has itself been liable, and this increase has gone on until the amount so recovered, which in 1882-83 represented little more than one-third of the total charge for interest, will, in the year upon which we are about to enter, actually exceed the total charge which we shall have to meet.

"These are facts to which, amid much that it is doubtful and precarious, we can look with unqualified satisfaction. Whatever be the trials which may await us in the future, whatever be the strain to which in years to come our financial resources may be subjected from war, or scarcity, or failure of revenue, we shall be able to encounter that strain in proportion as we have during years of peace and sufficiency strengthened our finances and refrained from adding to the burden of our public liabilities.

"In another respect the accounts of the year which has just come to a close must be most gratifying to us. I refer to the proof which they afford of the continuous and rapid improvement of the recently acquired Province of Upper Burma. The revenue of the Province, which has doubled during the last three years, now exceeds a crore of rupees, it is said to be collected without difficulty, and the Chief Commissioner reports that he has every

reason to believe that it will continue to expand. Other indications are equally favourable. The receipts from the Upper Burma Railway are highly satisfactory, and will, we expect, exceed the working expenses by Rx. 50,000 next year. It may perhaps be interesting to Hon'ble Members to know that the only item of Burmese revenue which does not tend to increase is that derived from Excise, the diminution of which we shall no doubt look upon with tolerant eyes. The country is rapidly settling down; in fact, if we exclude from consideration the operations in progress in the Chin-Lushai country, there has been no employment of troops, except in the district of Magwe and on the Wuntho border, where there has always been a certain amount of turbulence. Concurrently with the general return of the population to peaceful pursuits there has been a rapid falling off in serious crime and in the number of admissions to jail. These have, I learn from Sir Charles Crosthwaite, fallen from 2,500 in the month of May last to 1,500 in the month of December. This fortunate state of things has enabled the Chief Commissioner to recommend a decrease in the Military Police Force employed in the country, and there is little doubt that further reductions will prove practicable before long. I ventured last year to cite, as an indication of the improvement which the country was undergoing, the increase in the number of households under assessment to the Thathameda or house-tax. The number of those thus assessed has, I understand, increased by nearly 30,000 in the past twelve months—an increase which, although partly explained by the closer supervision exercised by the local authorities, is certainly due in the main to the manner in which families at one time either absent from the country, or in hiding, are now settling down peaceably in their homesteads. Considering that little more than four years have passed since Upper Burma became a part of the British Empire, we are, I think, justified in regarding with satisfaction the state of things which I have described.

"I wish, before I leave off, to say a very few words with regard to another item of expenditure—I mean that incurred on our military operations against the Chin-Lushai tribes. The amount spent in connection with this during the past year was certainly larger than we had any reason to anticipate. I feel, however, no doubt that the money thus laid out, as well as whatever additional expenditure may be incurred during the coming year, will prove to have been well spent. The British occupation of Upper Burma has entirely changed the character of our relations with the inhabitants of the mountainous Alsatia which lies between Burma and Chittagong. It would have been absolutely impossible for us, now that it is flanked on each side by British territory, to allow the tribes which inhabit it to continue the lawless and predatory existence which they have till now followed.

The operations which, as far as the present season is concerned, are now coming to a close, do not deserve to be classed amongst the ordinary punitive expeditions which have, I regret to say, been so common upon the frontiers of India—expeditions which, for any permanent results achieved by them, might in many cases as well never have taken place. We are satisfied that, in the case of the Chin-Lushai country, the establishment of through communications from the Burmese to the Bengal side, and also with Assam, the construction of roads and of lines of telegraph, together with the exhibition of strength which has resulted from the combined operations of the different columns employed, will effect the permanent pacification of these inaccessible tracts. Should this prove to be the case, the 50 lakhs, at the cost of which this result will have been obtained (I include the amounts taken in the accounts of this year, and that provided in the Budget for 1890-91) will certainly not have been thrown away. In considering this point it is worth while to bear in mind the expenditure which has been already incurred in these regions—I will not say entirely without effect, but without anything approaching to such a result as that for which we have now a right to look. I find, on reference to the official records, that the Lushai Expedition of 1871-72 cost over 22 lakhs, and the Naga Expedition of 1879-80 17½ lakhs, while an expenditure of nearly 5 lakhs was incurred on a punitive expedition against the Lushai tribes in 1888. The operations now in progress, which have been carried out with the greatest skill and courage by the officers entrusted with their direction, and which, but for the large amount of sickness experienced by our troops in a singularly malarious country, have been conducted at scarcely any cost in casualties, will, there is every reason to believe, prevent the recurrence of outbreaks, such as those which provoked the expeditions to which I have just referred, and will, once for all, convince these lawless tribes that it is for their own advantage to adopt peaceful pursuits and to cease from molesting their neighbours."

The Motion was put and agreed to.

The Council adjourned *sine die*.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 14th April, 1890.

Government of India Central Printing Office.—No. 127 L. D.—18-4-90.—308.—G. R.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 3rd July, 1890.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding.*
His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.
The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Baba Khem Singh Bedi, C.I.E.

EVIDENCE ACT AND CRIMINAL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE moved for leave to introduce a Bill to amend the Indian Evidence Act, 1872, and the Code of Criminal Procedure, 1882. He said:—

"The principal object of this Bill is to amend section 54 of the Indian Evidence Act, 1872, so as to render the previous conviction of an accused person irrelevant when it is sought to prove the conviction for the mere object of showing that the accused is a man of bad character and therefore likely to have committed the offence with which he is charged. The section as it now stands is in the following words:—

'In criminal proceedings the fact that the accused person has been previously convicted of any offence is relevant; but the fact that he has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.'

"There is no doubt that this section was deliberately introduced into the Act. In the first Report of the Select Committee it is stated—

'We include under the word "character" both reputation and disposition, and we permit evidence to be given of previous conviction against a prisoner for the purpose

of prejudicing him. We do not see why he should not be prejudiced by such evidence if it is true.'

"The High Court of Calcutta has thus been constrained to hold, in the case of *The Queen Empress v. Kartick Chunder Dass* (I. L. R. 14 Cal. 721), that a previous conviction is in all cases admissible in evidence against an accused person.

"In delivering the judgment of the Full Bench in this case, Mr. Justice Pigot, commenting upon the departure from English law involved in this result, observes:—

'The indiscriminate admission against an accused person of any previous convictions against him would not merely operate in many cases so as to work an unjust and unreasonable prejudice,' but also would admit 'a formidable novelty into the rules of evidence applied to criminal proceedings; for in a multitude of cases the section renders admissible and declares by its statutory force to be relevant facts which, in no possible sense save the technical statutory sense in which the word is used in the Act, would be relevant.'

"And, emphasizing the distinction between the English and the Indian law on the subject, he adds—

'The English legislature passes an Act for the sole purpose of shielding an accused from prejudice. The legislature in this country enacts a provision for the express purpose of prejudicing him.'

"For my part, I need hardly say that I prefer the rule of the English law. To admit prejudice in the place of proof, or to supplement proof by prejudice, is not consistent with that spirit of fair and impartial enquiry which should characterise a Court of Justice. It is an old maxim *Nemo bis puniri debet pro uno delicto;* and it is in fact punishing a man a second time for the same offence, if a previous conviction can be urged against him, notwithstanding that it may have no possible bearing upon the question of the truth of the charge on which he is being tried. Moreover, unless a previous conviction is to be taken as proof of bad character, it is difficult to understand on what ground it is admissible in evidence, and yet evidence of bad character is declared to be irrelevant, except in rebuttal of an assertion of good character on the part of the accused. The only cases in which evidence of a previous conviction should, I think, be allowed to be given are cases in which the previous conviction is a fact in issue, or is relevant under the provisions of the Act applicable to evidence in general.

1890.] [*Sir Andrew Scoble.*]

"It has been a work of some difficulty to frame amendments which shall carry out this principle in an intelligible way, so as to present the smallest amount of difficulty to those who will have to administer the law in its altered state. I will not attempt now to go in detail through the sections of the Act and point out the particular effect of each proposed alteration. But the amendments may be briefly stated as follows:—

(*1*) the provision allowing a previous conviction to be proved in all cases will be repealed;

(*2*) a previous conviction will be relevant under section 43 when it is a fact in issue or otherwise relevant under the Act;

(*3*) a previous conviction will be relevant as evidence of bad character, when such evidence is relevant;

(*4*) a previous conviction will be relevant to prove guilty knowledge or intention;

(*5*) in cases of offences relating to coining and forgery, facts showing the existence of any state of mind, such as intention or knowledge, will be relevant although those facts do not show the existence of the state of mind in reference to the particular matter in question;

(*6*) in cases where the accused is tried under section 234 of the Code of Criminal Procedure, 1882, at one trial for three offences of the same kind, the evidence relevant to prove one offence may be used as showing guilty knowledge or intention in the case of either of the other offences;

(*7*) the fact that an act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, will be relevant to prove guilty knowledge or intention.

"As I do not propose to carry the Bill beyond its preliminary stages in Simla, but to postpone its consideration until the Council meets in Calcutta, there will be ample opportunity in the meanwhile for discussing these amendments and, it may be, of improving upon them.

"Two other amendments of the Evidence Act are dealt with by the Bill. The first relates to confessions, as to which section 26 of the Act provides that—

'No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.'

"This is a very wholesome provision, but it has become liable to be defeated owing to the word 'Magistrate' not being defined. The High Court of Madras has pointed out that village-headmen in that Presidency are Magistrates, and that it is very undesirable that persons of this class, 'who are often very illiterate and never very independent,' should by their presence make admissible what is really only a police confession. The same difficulty does not appear to have arisen in other Presidencies, and it will be effectually removed by section 3 of the Bill, which defines 'Magistrate' to be 'a person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure, 1882.'

"The other amendment of the Evidence Act relates to section 86, and is effected by section 7 of the Bill. It provides for the authentication of foreign judicial records by political officers, and is intended to remove technical objections which have been raised under the existing words of the Act to the certification of such documents by officers who, though duly accredited to, are not actually resident in, the country concerned.

"The amendment of section 310 of the Criminal Procedure Code is subsidiary to the proposed amendments of the Evidence Act in regard to previous convictions."

The Motion was put and agreed to.

The Hon'ble SIR ANDREW SCOBLE also introduced the Bill.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

CATTLE-TRESPASS ACT, 1871, AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved for leave to introduce a Bill to amend the Cattle-trespass Act, 1871. He said:—

"For many years complaints have been made, particularly by planters, that the protection which the Act of 1871 affords is very inadequate. There is a special provision as regards pigs in section 26, but for other animals the Act does no more than permit occupiers of land to seize cattle found trespassing and

convey them to the pound, from which they are not released until a small fine has been paid, varying from eight annas for a buffalo to one anna for a sheep or goat. This throws much trouble on the person injured, while the owners of the cattle causing the damage escape altogether upon payment of a very trifling fine. It is true that they might also be sued for compensation in a Civil Court, but, if the damage done has been considerable and a suit is anticipated, the real owner generally puts forward some man of straw to redeem the cattle from the pound, and this makes it very difficult to establish his responsibility. In rural tracts the procedure provided by the Act answers well enough: the cattle are all known, as well as those to whom they belong, and nearly every owner of cattle has his own crops to think of as well as those of his neighbours. But in planting districts, as well as near towns, the case is widely different.

"The practice in Coorg is to tie up all cattle during the day time in order to secure their manure, but to let them roam about at night and find pasture where they can. In Assam the cultivators are careful to watch and tend their cattle so long as they have growing crops of their own, but as soon as their rice has been harvested the animals are turned loose untended; and they do much damage, the buffaloes especially, by trespassing in the tea gardens. The fact that they can be restrained when it is for the raiyat's advantage to restrain them makes it reasonable to insist on his responsibility when he neglects to do so. The fear of having to pay pound-fees has little effect: the animals can seldom be caught, and if by chance one here and there is seized and impounded the fine is too small to be deterrent.

"But it is not the planters only who are aggrieved. In 1886 the Raja of Bhinga in Oudh complained to the Deputy Commissioner of the 'nightly devastations committed on his tenants' crops by semi-wild cattle belonging to some residents of the neighbouring town. They live,' he said, 'in ever-constant dread that in a single night their whole year's labour and expectations may be brought to nought.' And similar representations have come from all parts of the country. In Nagpur, for instance, it is represented to be the general practice of the cowherds deliberately to turn their cows and buffaloes into private compounds at night, and doubtless the occupiers of the neighbouring fields suffer in the same way. You may see the cows, it is said, run into their owner's premises and the herdsman in attendance, but under the present law your only remedy is a tedious and expensive lawsuit. In another place, Orissa I believe, the cattle are actually trained to trespass and to take to their heels as soon as a note of warning is sounded by a man who remains at a safe distance.

"In view of these facts the Government of India in 1888 resolved to amend the law, as I propose to amend it now, by empowering Local Governments, in any area where cattle are thus wantonly allowed to stray and trespass, (1) to increase the fines leviable for animals impounded, and (2) to extend to other animals the special provision made in section 26 for the case of pigs. This section provides that—

'Any owner or keeper of pigs, who, through neglect or otherwise, damages or causes or permits to be damaged any land, or any crop or produce of land, or any public road, by allowing such pigs to trespass thereon, shall * * * * * be punished with fine not exceeding ten rupees.'

"In other words, in the case of pigs damage by negligence has been recognized as a ground for criminal liability cognizable by a Magistrate in a summary manner, whereas similar damage caused by other cattle involves only a civil liability and constitutes a ground for civil action. The reason advanced by the Hon'ble Mr. Cockerell, in submitting the Select Committee's Report in 1871, was that there are peculiar difficulties in the way of seizing pigs and also of conveying them to the pound, but there are at least equal difficulties in regard to the capture of the trained or semi-wild cattle which cause so much mischief in Coorg, Assam, Nagpur, Orissa and other parts of the country. Such cattle are quite as mischievous, quite as agile and quite as difficult to seize as pigs, and it seems necessary to treat them in the same way.

"It has been said that those who complain ought to fence their properties, but no ordinary fencing would keep out the active cattle in question. The lighter animals will jump almost anything; the heavy buffalo crashes through any ordinary obstacle. Anyone who, like myself, has seen a strong fence of barbed wire completely wrecked by a sambhar plunging through it, would at once cease to urge this objection.

"Proposals for a local Regulation have been received both from Coorg and Assam, and a Bill to the same effect as that which I am about to lay on the table has been lately introduced into the Legislative Council of the Government of Bombay, in order to check the ravages committed by cattle in Gujarat and some other parts of that Presidency. But the Act to be amended is an Imperial Act, and it does not seem right to pass on to a Provincial Legislature the duty of making it effectual. The mischief exists in special parts of almost every Province, and this Council alone can make provision for them all.

"I have stated that as long ago as 1888 the Government of India at one time determined on legislation of the same character as that which I propose.

1890.] [*Mr. Hutchins.*]

It was however, dropped for two reasons—on account of the difficulty of identifying the cattle or herdsmen, and thus bringing home the damage to the right persons; and because it was supposed that the amendments would not meet the requirements of the planters and others who had made special representations. As to the latter objection I have here a general memorial from representatives of all the planters of India, both Northern and Southern India, unanimously praying for the extension of section 26 to other animals than pigs and accepting this single amendment as all that they require; and the former objection is only the latter in another shape—it was because it was thought that the owners could not be identified that the amendment was deemed insufficient. It might therefore be enough to say that it has now been accepted as sufficient—at all events by the planters; but I may add that the very fact that the unfortunate occupier of land will now have an easy remedy will induce him to take measures to secure the identification of trespassing cattle which he has not hitherto found it worth while to take.

"The main provision of my Bill, then, is to enable Local Governments in special areas to extend to other cattle the section which now applies only to pigs, and at the same time to raise the penalty from 10 to 25 rupees. But, in order to make this effectual by reaching the owner, I propose further to insert certain words in section 25, which authorizes the recovery of any fine imposed for mischief by sale of the cattle which cause the damage. Mischief implies an intention to cause wrongful loss or damage; but the keeper of cattle in this country is very generally a child of tender years and almost certainly a pauper. Proof of the offence of mischief against a child must always be difficult, while it would be useless to take proceedings against a pauper cowherd unless the fine could be enforced against the owner by sale of the animals. This will be secured by the third section of my Bill.

"By the second section Local Governments are empowered in special areas to raise the fines on impounded cattle to double the scale prescribed by the Act. But even these sums are very trifling, particularly in comparison with those which it has been found necessary to impose by the Forest Act on cattle trespassing on reserved forests. To prevent possibility of hardship I have reserved power to the magistracy to remit any amount above the fees laid down in the Act, and in view of this safeguard I am not sure that a higher maximum than double the standard scale might not be authorised. This, however, can be considered in due course by the Select Committee."

The Motion was put and agreed to.

[*Mr. Hutchins.*] [3RD JULY, 1890.]

The Hon'ble MR. HUTCHINS also introduced the Bill.

The Hon'ble MR. HUTCHINS also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

CENSUS BILL.

The Hon'ble MR. HUTCHINS asked leave to postpone the Motion for leave to introduce a Bill to provide for certain matters in connection with the taking of the Census. He explained that the Bill was not quite ready, as some of its sections required to be reconsidered. He hoped to introduce the Bill at the next Council Meeting.

Leave was granted.

The Council adjourned to Thursday, the 10th July, 1890.

S. HARVEY JAMES,

SIMLA; *The 4th July, 1890.*

Secretary to the Government of India, Legislative Department.

G. C. Press, Simla.—No. 123 L. D.—4-7-90.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 10th July, 1890.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.
The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble R. J. Crosthwaite, C.S.I.
The Hon'ble Bábá Khem Singh Bedi, C.I.E.

CATTLE-TRESPASS ACT, 1871, AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved that the Bill to amend the Cattle-trespass Act, 1871, be referred to a Select Committee consisting of the Hon'ble Sir Andrew Scoble, the Hon'ble Mr. Crosthwaite, the Hon'ble Bábá Khem Singh Bedi and the Mover.

The Motion was put and agreed to.

CENSUS BILL.

The Hon'ble MR. HUTCHINS also moved for leave to introduce a Bill to provide for certain matters in connection with the taking of the Census. He said:—

"In the United Kingdom it has been the custom to pass a special Act in connection with each census, making it obligatory on the persons residing at the time within the kingdom to give the information required, and protecting them in turn against annoying questions not absolutely indispensable. The Act enters also into details of the agency by which the census is to be taken, and of the procedure consequent upon the enumeration.

"In India it is thought unnecessary to enter into such minutiæ, but, when the last census was about to be taken, the Government of the day considered it advisable that the hands of those charged with the operations should be strengthened, and that possible irregularities on the part of the agency employed should be restrained, by a short enactment. This became law under the title of Act XIV of 1880.

"I am glad to say that, so far as misconduct on the part of the census officers and contumacy on that of the community at large are concerned, it was not necessary to have recourse to the penal provisions of the law, save in a very few exceptional cases. Nevertheless, the fact that such occasions did arise makes it impossible to assert that without those provisions the census operations would have been conducted with equal cordiality and absence of friction.

"I therefore propose to ask the Council to re-enact the provisions of the Act of 1880 with a few modifications suggested by the experience of officers who were engaged in the superintendence of the census on the last occasion.

"The Bill, which I now lay on the table, provides first by sections 3 and 4 for the formal appointment of persons to aid in taking the census, investing them, whilst acting in that capacity, with the character of public servants within the meaning of the Penal Code.

"It next provides, by the fifth section, for the enumeration of special aggregates of people by the person in charge of or in authority over those aggregates. Thus, if so required, a military officer will enumerate his regiment; a shipmaster, his crew; a superintendent, the inmates of his asylum, jail, or hospital; and an agent or manager, the persons on the railway premises, plantation or factory of which he is in charge.

"By section 6 District Magistrates are empowered to requisition from landholders, lessees of fisheries and others such assistance as may be needed towards the enumeration of persons on their lands, fisheries, or the like.

"Sections 7, 8 and 9 of the Bill are peculiarly necessary in India, where the vast majority of the population can neither read nor write, and cannot be trusted either to get properly filled up, or even to safely keep in their possession, a document like a census schedule. To guard against the loss of the schedule,

or incorrect and incomplete returns, the documents in question will under the procedure laid down in these sections be retained in the custody of census officers, and filled in by them on behalf of the householders residing in the areas of which they are in charge. At the same time the tenth section leaves it to the discretion of the Local Government to adopt, to such extent as it thinks proper, the custom followed in the United Kingdom of throwing upon the householder in person the task of filling up the returns, and on the census officer only that of distributing and collecting the schedules, with the responsibility of seeing that the entries are in accordance with the instructions. On this point a modification has been introduced into the Bill by section 14, which allows the extension of the provisions of sections 7, 8 and 9 even to areas in which there are in force Municipal Acts or rules based exclusively on the English system of enumeration. Even our municipal towns contain a very considerable illiterate population to which, as I have shown, that system is unsuited.

"A second modification will be found in the provisions of sections 9 and 11 with regard to the numbering of houses. This process is indispensable in order that the enumerator may identify each building he has to visit, but at the last census in a few cases it was resisted. In the present Bill, therefore, such opposition has been made penal, but at the same time care has been taken to limit the duration of what some owners may consider the disfigurement of their houses. The numbers must not be removed or obliterated before 31st March.

"The Bill contains only one other new penal provision, and this has been rendered necessary by several instances which occurred at the last census, and more especially in parts of the country where it was very difficult to obtain an adequate supply of census officers. An enumerator or supervisor, after having undertaken duties in a certain area, was found at the last moment to have departed to a distant place without informing the official responsible for arranging for agency of his intended absence, and of course without providing a substitute for his work on the census night. Such neglect of duty will now be punishable unless some sufficient excuse can be established. The other penal provisions contained in section 11 are the same as in the Act of 1880.

"And the last remark applies to the rest of the Bill. Section 12 re-enacts the safeguard provided by the Act of 1880 against the reckless initiation of prosecutions in connection with the census; whilst, to guard against false entries

from interested motives, section 13 provides that no entry shall be admissible as evidence in any litigation, thus precluding the attainment of the end for which such entries would ordinarily be made, but it allows the record to remain evidence for the purposes of the administration of the census."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also introduced the Bill.

The Hon'ble MR. HUTCHINS also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

CHRISTIAN MARRIAGE ACT, 1872, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE moved for leave to introduce a Bill to amend the Indian Christian Marriage Act, 1872. He said :—

"The Indian Christian Marriage Act was passed in 1872, after very careful deliberation, and it is not without reluctance that I invite the Council to reconsider a measure which affects such important interests and is so calculated to open the floodgates of controversy. But the amendments which I have to propose are supported by such weighty authority, and tend so completely to strengthen the safeguards which the Act provides against irregular marriages, that I hope they may be accepted without giving rise to unprofitable discussion or the assertion of claims which it would be contrary to the policy of Government to recognize.

"The Bishops of the Church of England in India and Ceylon, at a Provincial Conference held in January, 1888, made two suggestions for the amendment of the Act, the first of which was designed to guard against the possibility of a marriage being solemnized by a person who, though episcopally ordained, does not hold the Bishop's license to officiate in the diocese; and the second to render persons taking a false oath before a Surrogate appointed by a Bishop to issue marriage licenses liable to punishment under the Penal Code. The first of these proposals is carried into effect in section 1 of the Bill, and is clearly desirable for the prevention of scandal. To the second proposal a wider application has been given in section 4 of the Bill, which provides that where an oath, declaration, notice or certificate is required by the Act, or by any rule or custom of either the Church of England, the Church of Scotland or the Roman Catholic Church, the

penalties of perjury shall attach to any person intentionally making a false oath or declaration, or signing a false notice or certificate, for the purpose of procuring a marriage or license of marriage.

"Sections 2 and 5 of the Bill are intended to remove ambiguities which have been found to exist in sections 11 and 68 of the Act.

"The object of sections 3 and 6 is to introduce greater regularity into the record of marriages of Native Christians performed under Part VI of the Act. As the law now stands, such marriages may be solemnized by persons licensed under section 9 to grant certificates of such marriages; but the person so licensed, and celebrating such a marriage, is not required to grant a certificate except upon the application of one of the parties to the marriage, and on payment of a fee, and is only bound to keep a register-book of the marriages in respect of which certificates are granted. It has thus come to pass that, in cases of bigamous or other irregular marriages, no certificate is applied for, and no record is consequently made. To check these loose practices, which are not of uncommon occurrence, section 3 of the Bill provides that registers of all marriages so lemnized by such licensed persons shall be duly kept, and section 6 enacts a penalty for failure in this or any other duty prescribed by the Act.

"The seventh section of the Bill is framed to get over a difficulty which has arisen from the wording of section 86 of the Act, in which powers are conferred on the Governors in Council of Madras and Bombay with respect to Native States situate within the local limits of those Presidencies. It is contended that States like Travancore and Cochin are outside rather than within the local limits of the Presidency of Madras, and the Bill accordingly extends jurisdiction to States bordering on as well as those situate within the limits of a Presidency."

The Motion was put and agreed to.

The Hon'ble SIR ANDREW SCOBLE also introduced the Bill.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 24th July, 1890.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

SIMLA;
The 11th July, 1890.

G. C. Press, Simla.—No. 150 L. D.—11-7-90.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 24th July, 1890.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding.*
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.
The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble R. J. Crosthwaite, C.S.I.
The Hon'ble Bábá Khem Singh Bedi, C.I.E.

CENSUS BILL.

The Hon'ble MR. HUTCHINS moved that the Bill to provide for certain matters in connection with the taking of the Census be referred to a Select Committee consisting of the Hon'ble Sir Andrew Scoble, the Hon'ble Sir Charles Elliott, the Hon'ble Mr, Crosthwaite and the Mover, with instructions to report after two months.

The Motion was put and agreed to.

PETROLEUM ACT, 1886, AMENDMENT BILL.

The Hon'ble MR. HUTCHINS also moved for leave to introduce a Bill to amend the Schedule to the Petroleum Act, 1886. He said:—

"In one sense this is a very simple measure, but at the same time it is of so extremely technical a character that it will only be really intelligible to

experts in physical science. I trust the Council will be satisfied with a very general explanation of the amendments proposed. It would require a lecture in chemistry and a series of practical illustrations with a proper apparatus clearly to demonstrate wherein the old schedule is defective and how the defects are to be remedied.

"Section 4 of the Act defines the flashing point of petroleum to be the lowest temperature at which it yields a vapour furnishing a momentary flash when tested in accordance with the directions contained in the schedule. This schedule was originally prepared in England by Sir F. Abel, Dr. Warden of Calcutta and Mr. Redwood, but it was modified at Dr. Warden's instance by the insertion of provisions, (1) that no flashing point obtained should be accepted unless it was at least 8° above the temperature at which the testing commenced, (2) that when a flash occurs on the first application of the flame the next test should commence at a temperature lower by 10°. It was subsequently objected that this procedure would soon bring the temperature down below the limit of 40° to which the Abel apparatus is graduated, and it would consequently be impossible to determine the legal flashing point of highly inflammable oils. A reference on this point has been made to Sir F. Abel, and the result is that a further slight modification must be made in the directions.

"As now drafted, the schedule has been finally approved by Sir F. Abel and our scientific advisers in this country, and I trust the Council will accept it in reliance on their eminent authority. I have only to add that, since any oil flashing below 47° is to be condemned as dangerous, it is not necessary to determine with exactitude any flashing point below that temperature. All that is required is to make sure, before condemning the oil, that it really flashes below 47°, and this will be ascertained beyond doubt by applying the test at 46° three times in succession."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also introduced the Bill.

The Hon'ble MR. HUTCHINS also moved that the Bill be taken into consideration at the next Meeting of the Council, when he would explain the urgency of the matter.

The Motion was put and agreed to.

1890.] [*Sir David Barbour.*]

PAPER CURRENCY ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved for leave to introduce a Bill to amend the Indian Paper Currency Act, 1882. He said:—

"The amendment which it is proposed to make is a very simple one.

"Under the provisions of the existing law, the whole amount of the coin and bullion received for currency notes is retained as a reserve to pay these notes, with the exception of such an amount, not exceeding six crores of rupees, as the Governor General in Council, with the consent of the Secretary of State for India, may from time to time fix. The amount of coin or bullion which is not retained as a reserve may be invested in securities of the Government of India.

"The amount at present invested in securities of the Government of India is in round numbers six crores of rupees, being the maximum amount which can be invested under the law as it now stands, and the investment was raised to this figure in 1877-78. Since that time the total note circulation has largely increased. In 1877-78 the minimum circulation of the year was Rs. 11,13,00,000; in 1888-89 the minimum circulation was Rs. 14,82,00,000; in 1889-90 the minimum circulation was Rs 14,96,00,000; and, according to the latest return, the actual circulation was as much as Rs. 18,00,00,000 on the 7th of the present month. Under the circumstances the time has clearly arrived when it is expedient to increase the limit of investment. The Bombay Chamber of Commerce, the Calcutta Chamber of Commerce and the Madras Chamber of Commerce have all expressed themselves in favour of raising the legal limit of investment from six to eight crores of rupees. The Government of India is also of opinion that this may safely be done, and the Secretary of State for India in Council has given his approval.

"For my own part I think that if we err at all in this matter it is on the side of caution rather than of rashness, and I believe that there will be no opposition from any section of the public to a measure which is well within the limits of safety, and which will ultimately add eight lakhs of rupees yearly to the public revenue."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also introduced the Bill.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

Tue Motion was put and agreed to.

NORTH-WESTERN PROVINCES AND OUDH BILL.

The Hon'ble MR. CROSTHWAITE moved for leave to introduce a Bill to provide for the better administration of the North-Western Provinces and Oudh and to amend certain enactments in force in those Provinces and in Oudh. He said:—

"Owing to difficulties which had arisen in the revenue administration of the Benares Division and in the judicial and revenue administration of the province of Oudh, a Committee was appointed by the Lieutenant-Governor and Chief Commissioner to consider the question of reorganizing the existing divisions in the North-Western Provinces and of making such changes in the administration of Oudh as would facilitate the conduct of the business of the judicial and revenue departments. The proposals contained in the report of the Committee have been in the main approved by the Local Governments and by the Government of India, and the measure which I now ask leave to introduce is intended to give effect to these proposals.

"In the North-Western Provinces it has been found that the Benares Division is too extensive a charge for one Commissioner, and it is, therefore, necessary to reduce the size of that division, and consequently to reorganize other divisions. The Benares Division includes seven districts with an area of 18,337 square miles, and a population according to the census of 1881 of nearly 10 millions. The Allahabad Division, which has the next largest area and population after the Benares Division, contains an area of 13,745 square miles with a population of $5\frac{3}{4}$ millions. The work, therefore, which the Benares Commissioner has to dispose of considerably exceeds that which devolves on any other Commissioner. The number of appeals in rent-cases, for instance, is in the Benares Division almost equal to the total number of such appeals in the Meerut, Agra and Rohilkhand Divisions taken together, while the partition and other revenue cases are far more numerous than in any other division except Allahabad.

1890.] [*Mr. Crosthwaite.*]

It has consequently been found necessary twice within the last three years to appoint an Additional Commissioner to clear off the arrears of business which had accumulated. In consequence, moreover, of the increase of railway communication throughout the division, there is every reason to expect that the work of the Commissioner will increase.

"It has been decided, therefore, to separate the three important districts of Gorakhpur, Basti and Azamgarh from the Benares Division, to create a new division containing those districts, to transfer the district of Jaunpur from the Allahabad to the Benares Division, and to make the latter division consist of the five permanently-settled districts of Benares, Mirzapur, Ghazipur, Ballia and Jaunpur. The transfer of the Jaunpur District from the Allahabad to the Benares Division will enable the Local Government to abolish the Jhánsí Division. At present this division, which comprises the districts of Jhánsí, Jalaun and Lalatpur, is a scheduled district under the Scheduled Districts Act, 1874, and is administered somewhat after the manner of a non-regulation province, the Commissioner exercising civil and criminal judicial powers, and the districts being administered by Deputy Commissioners and Assistant Commissioners, who besides their revenue and magisterial functions have also the powers of Civil Courts. Hitherto, mainly owing to the fact that the division lies to the south of the Jumna and that it is difficult of access in the rainy season, it has been thought desirable to maintain it as a separate division. The difficulty of access has, however, disappeared owing to the opening of the Indian Midland Railway and the construction of a bridge across the Jumna at Kalpi. The Jhánsí Division has now been brought into immediate contact with the rest of the North-Western Provinces, and it can conveniently be administered by the Commissioner of Allahabad.

"Having regard to the area of the Jhánsí Division, its population and the duties which the Commissioner has to perform, His Honour the Lieutenant-Governor is of opinion that it is now unnecessary to maintain it as a separate division. It has therefore been decided to abolish the Commissionership, to remove the Jhánsí Division from the list of scheduled districts and to unite it to the Allahabad Division, placing it under the same laws as are in force in that division. The result will be that the Jhánsí Courts Act, 1867, will be repealed, the civil judicial powers now exercised by the revenue-officers will be withdrawn and transferred to the regular Civil Courts to be established in the Division, and the criminal jurisdiction now exercised by the Commissioner will be exercised by

the Sessions Judge. His Honour also considers that the small and unimportant district of Lalatpur, which is not far from Jhánsí and is connected with it by rail, may safely be reduced to a sub-division of the Jhánsí District.

"To give effect to these proposals Part I of the Bill amends (section 3) the North-Western Provinces Land-revenue Act, 1873, so as to empower the Local Government, with the previous sanction of the Governor General in Council, to create new, or abolish existing, divisions or districts, and to alter the limits of any division or district. This will enable the Local Government, with the proper sanction, to alter the limits of the Benares Division, to create a new division consisting of Gorakhpur, Basti and Azamgarh, to abolish the Jhánsí Division, to unite the territories now included therein to the Allahabad Division, and to reduce Lalatpur to a sub-division.

"The removal of the Jhánsí Division from the list of scheduled districts and the assimilation of the law in that division to the law in force in the Allahabad Division are provided for by sections 4 and 7 of the Bill. The provisions required for pending cases owing to the repeal of the Jhánsí Courts Act, 1867, and the extension to the Jhánsí Division of the Bengal, North-Western Provinces and Assam Civil Courts Act, 1887, are contained in section 8 of the Bill.

"With regard to Oudh it is proposed to transfer to the Board of Revenue of the North-Western Provinces the powers and duties now conferred on, and performed by, the Chief Commissioner as the Chief Controlling Revenue-authority.

"At present the Chief Commissioner of Oudh discharges in respect of Oudh most of the duties performed by the Board with regard to the land-revenue administration in the North-Western Provinces. Appeals in partition cases, for instance, are decided by him; the ultimate decision in all matters involved in the administration of the land-revenue lies with him; and the direction of the machinery of the revenue administration is immediately in his hands. There can be no doubt that these various duties, some of them being of a judicial nature, cannot be performed satisfactorily by the Lieutenant-Governor and Chief Commissioner who administers both the North-Western Provinces and Oudh. For the due discharge of such duties an amount of direct personal attention and supervision is required which it is impossible for the head of a large Government to give. Already the Departments of Excise, Stamps, Income-tax and Treasuries in Oudh have been made over to the Board of Revenue, and it is proposed to complete the transfer of business and to make the Board of Revenue of the North-Western Provinces the Board of Revenue of the North-Western Provinces and Oudh.

1890.] [*Mr. Crosthwaite.*]

"Accordingly sub-section (*1*) of section 10 of the Bill provides that the Board of Revenue constituted under the North-Western Provinces Land-revenue Act, 1873, shall be also the Board of Revenue of Oudh and shall hereafter be designated the Board of Revenue of the North-Western Provinces and Oudh. Sub-section (*3*) of the same section makes the Board the Chief Controlling Revenue-authority in Oudh; and sections 11 and 12 and sections 14 to 29 (both inclusive) make in the Oudh Land-revenue Act, 1876, the amendments which are required to transfer from the Chief Commissioner to the Board the powers and duties which in revenue matters are conferred on, and performed by, the Board in the North-Western Provinces. Care has been taken to preserve the special powers of the Chief Commissioner and the Governor General in Council in the settlement of taluqdari mahâls and the powers of the Chief Commissioner with regard to annulling the settlement of such mahâls for arrears of revenue.

"The next proposal with regard to Oudh is to relieve the Commissioners of their judicial functions, and to place them and the District Judges as nearly as possible on the same footing as officers of corresponding designations in the North-Western Provinces. There are at present in Oudh four divisions which are each composed of three districts; and the duties of a Commissioner have been described as follows:—The Commissioner supervises the proceedings of the district officers in all matters connected with the revenue in its various branches, and with the executive administration generally, and he is the channel of communication between the district officers and the Government. In certain cases appeals lie to him: in nearly all he is competent to revise and control. In respect of all that class of litigation between agricultural tenants and their landlords which is excluded from the jurisdiction of the ordinary Civil Courts and which is disposed of by Courts of Revenue under the Oudh Rent Act, the Commissioner exercises a wide appellate jurisdiction. In addition to these duties he is also the Sessions Judge for his division, and in that capacity he has to try as a Court of Session the most serious of the criminal cases and to hear criminal appeals.

"The system under which one officer is the chief executive authority in a division and also exercises civil and criminal judicial functions has been found to work well in the early, and what may be called the non-regulation, stage of a province, when the laws are simple and the work is light. But when the province becomes developed and passes out of the non-regulation stage, when the law becomes more complicated and the work heavier, it is extremely difficult to carry on such a system satisfactorily. On the one hand, the Commissioner has to listen to the exhortations and admonitions of the Local Government with regard to his executive work; on the other hand, the chief judicial authority

requires him to dispose of his judicial work promptly and regularly, and finds fault if there is a delay in the trial of sessions cases or in the hearing of appeals. The pressure of judicial work becomes so great that the Commissioner cannot give the requisite amount of time and attention to the administrative business of his Division, and it is found that to meet the requirements of the executive and judicial administrations it is necessary to separate the executive and judicial functions discharged by the Commissioner. His Honour the Lieutenant-Governor considers that the time has now arrived when this separation should be carried out in Oudh. The relief which will thus be afforded to the Commissioners will enable the Local Government to reduce the number of divisions to two, but it will be necessary at the same time to increase the number of District Judges. It is proposed also, in order that Munsifs and Subordinate Judges in Oudh may be able to assist the District Judge more effectually, to confer upon them a jurisdiction similar in extent to that exercised by the same classes of officers in the North-Western Provinces. With the object of relieving Commissioners of some of the judicial functions which they have to discharge under the Oudh Rent Act, 1886, it has been decided to amend that Act so as to confer on District Judges appellate jurisdiction in rent cases similar to the like jurisdiction exercised by District Judges in the North-Western Provinces, and to confine the jurisdiction of the Commissioner and the Board to that class of rent-cases which has been found by experience to be most suitably dealt with by the Revenue-authorities.

"To carry out these proposals the Bill (section 13) inserts in the Oudh Land-revenue Act a section (4B) empowering the Chief Commissioner, with the previous sanction of the Governor General in Council, to create new, or abolish existing, divisions. Sections 33, 34 and 35 amend the Oudh Civil Courts Act, 1879. The ordinary jurisdiction of the Munsif is raised from suits of a value not exceeding Rs. 500 to suits of a value not exceeding Rs. 1,000, while power is given to the Local Government to extend the jurisdiction of a Munsif to suits of a value not exceeding two thousand rupees, and the jurisdiction of a Subordinate Judge to all suits cognizable by the Civil Courts. Provision is made (section 34) for appeals from the decrees of a Subordinate Judge upon whom this extended jurisdiction may be conferred, and a power, similar to the power conferred on the High Court by section 21 (*4*) of the Bengal, North-Western Provinces and Assam Civil Courts Act, 1887, is given to the Judicial Commissioner to direct that appeals from a Munsif shall be preferred to a specified Subordinate Judge. Section 35 of the Bill amends section 27 of the Oudh Civil Courts Act, 1890, so as to give the District Judge in Oudh the same jurisdiction under the

1890.] [*Mr. Crosthwaite.*]

Indian Divorce Act as is conferred by that Act on District Judges in the Regulation Provinces.

"The amendments which it is proposed to make in the Oudh Rent Act are contained in sections 37 to 51 (both inclusive) of the Bill. By section 39 of the Bill the Board is made a Court of Revenue in the place of the Judicial Commissioner in section 109 of the Act. Section 119 of the Act is amended by section 44 of the Bill on the lines of section 189 of the North-Western Provinces Rent Act, 1881, so as to make the decrees and orders of a Collector or Assistant Collector in a specified class of suits final, except in certain cases in which an appeal is allowed to the Judge or the Judicial Commissioner according to the value of the suit. Generally the rules regarding appeals have been assimilated to the rules under the North-Western Provinces Rent Act, 1881; power is given (section 47) to the Board to revise cases in which no appeal lies and to review its own orders, and to the Commissioner and the subordinate Courts to grant a review of judgment in cases which are not appealable.

"I need not, my Lord, detain the Council with a fuller examination of the Bill. Various slight amendments which do not require explanation have been made in enactments in force in Oudh so as to effect the transfer of the duties of the Chief Controlling Revenue-authority from the Chief Commissioner to the Board; and I may mention that the Act is divided into three Parts which can be separately put in force, Part I relating to the North-Western Provinces, Part II relating to Oudh, and Part III relating to both the North-Western Provinces and Oudh. Part I contains the legislation required for the North-Western Provinces, Part II the legislation required for Oudh, and Part III provisions regarding the Board of Revenue which will, under section 10 of the Bill, be the Board of Revenue of the North-Western Provinces and Oudh."

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITE also introduced the Bill.

The Hon'ble MR. CROSTHWAITE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the North-Western Provinces and Oudh Government Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 31st July, 1890.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

SIMLA;
The 25th July, 1890.

G. C. Press, Simla.—No. 187 L. D.—25-7-90.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 31st July, 1890.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding.*
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.
The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble R. J. Crosthwaite, C.S.I.
The Hon'ble Bábá Khem Singh Bedi, C.I.E.

PETROLEUM ACT, 1886, AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved that the Bill to amend the Schedule to the Petroleum Act, 1886, be taken into consideration. He said:—

"Although Act XII of 1886 was passed in March, 1886, it has not yet come into force. Under its first section it has to be brought into force by a notification in the Gazette of India. Elaborate rules to regulate the importation, storage, possession and transport of petroleum have been framed under sections 8 and 11 by the different Local Governments, the necessary testing apparatus have been provided, and I have been most anxious to introduce the Act, and have only refrained from doing so on account of the ambiguity in the schedule, of which I gave some explanation at the last meeting of the Council. This objection will be removed if the Bill now on the table is allowed to become law.

"Before they consent to pass the Bill, Hon'ble Members will doubtless like to know what are the precise amendments which have been made in the schedule as passed in 1886. A copy of the Bill is before each Member and perhaps

he will kindly refer to it. The alterations are as follows. In line 3 of the third clause the word 'two' has been substituted for 'the'. At line 8 the following clause has been interpolated, *viz*, 'and if in no instance the flash has taken place within 8° of the temperature at which the testing is commenced'. Again, at line 16 of the same clause and at line 9 of the fourth clause a like provision has been inserted. On the other hand, words to the like effect, but which from their position had given rise to ambiguity, have been omitted from the beginning of the fourth clause. The proviso at the end of the fourth clause is practically the only new matter, and I explained last week why it was necessary.

"As the schedule is purely technical and the amendments are but slight and have been approved by the best scientific authorities, I ask that the Bill may now be taken into consideration and passed, so as to enable the Government to give early effect to an enactment which has remained idle on the statute-book for upwards of four years."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also moved that the Bill be passed.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES AND OUDH BILL

The Hon'ble MR. CROSTHWAITE moved that the Bill to provide for the better administration of the North-Western Provinces and Oudh and to amend certain enactments in force in those Provinces and in Oudh be referred to a Select Committee consisting of the Hon'ble Sir Andrew Scoble, the Hon'ble Sir Charles Elliott, the Hon'ble Mr. Hutchins and the Mover, with instructions to report after two months.

The Motion was put and agreed to.

INDIAN EMIGRATION ACT, 1883, AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved for leave to introduce a Bill to amend the Indian Emigration Act, 1883. He said:—

"The main object of this Bill is to do away with the necessity of an entirely fresh survey of a steamer simply because it proposes to carry emigrants Under our Emigration Act of 1883 no vessel can embark emigrants without a license;

the master is required to apply for a license through the Protector of Emigrants; and section 56 goes on to provide that the Protector 'shall cause the vessel to be surveyed by a competent person at the cost of the master, with a view to ascertain her seaworthiness, and the extent and nature of her accommodation for emigrants, and to ascertain that she is properly ventilated, and is supplied with all the tackle, apparel and furniture requisite for her intended voyage.' Hon'ble Members will observe that this direction is absolute—the Protector shall cause a survey to be made. The steamer may be a new one and of the highest class; it may have been fully surveyed, and have obtained a certificate of seaworthiness a month or even a day before; but, unless such survey was held under the orders of the Protector, it is ineffectual and the certificate goes for nothing, so far as the embarkation of emigrants is concerned.

"Now in 1883 and for a few years afterwards I do not suppose that many steam-vessels were offered for the Indian emigration service, and no inconvenience was experienced. But of late, I am glad to say, the use of steamers for this purpose has become quite common, very much to the comfort and advantage of natives of India proceeding to our colonies. This Council will certainly be anxious to encourage the best class of steamers to offer themselves for the carriage of emigrants, and therefore to remove any unnecessary restrictions tending to make such service vexatious or unremunerative. I understand that to open up a ship and her machinery for a complete survey involves a loss of at least a week at Calcutta; and at Madras, our other great emigration port, it is reported to be quite impossible fully to carry out the letter of the law. Owing to the want of docking accommodation, a complete survey of the hull of a vessel is impracticable, and even the internal examination cannot be properly conducted, since steamers which now take emigrants from Madras invariably arrive there with cargo on board. In practice, therefore, at Madras the law, as it now stands, does not appear to be fully obeyed, while at Calcutta the requirement of an altogether fresh survey involves a great deal of delay and needless expense, and has deterred, and is likely to deter, the best and largest steamers from tendering for emigration service.

"Of course, I am not proposing to send emigrants to sea without having taken all reasonable precautions that the vessel in which they are to be conveyed is fit for the voyage. I merely submit that where a survey certificate of seaworthiness has been granted by a competent authority, and is still in force for other voyages, it is needless to insist on an entirely fresh survey simply because the steamer is to carry emigrants. In a matter of this kind we may well follow the

lead of British legislation, and the Merchant Shipping Act of 1876 contains just such a provision against double survey in the case of emigrant steamships as I ask to be allowed to introduce here. Section 18 of that Statute runs as follows:—

'In every case where a passenger certificate has been granted to any steamer by the Board of Trade under the provisions of the Merchant Shipping Act, 1854, and remains still in force, it shall not be requisite for the purposes of the employment of such steamer under the Passengers Acts that she shall be again surveyed in her hull and machinery..... but.....such Board of Trade certificate shall be deemed to satisfy the requirements of the Passengers Acts with respect to such survey, and any further survey of the hull and machinery shall be dispensed with; *and so long as a steamship is an emigrant ship*, that is, a passenger ship within the meaning of the Passengers Acts....., and the provisions contained in the said.....Acts as to the survey of her hull, machinery and equipments have been complied with, she shall not be subject to the provisions of the Merchant Shipping Act, 1854, with respect to the survey of and certificate for passenger steamers.....'.

"The employment of steamers for the conveyance of passengers to or from British Indian ports is regulated by our Act VII of 1884. Section 4 forbids any steamship to carry more than twelve passengers unless she holds a subsisting certificate of survey granted in accordance with the provisions of that Act; but section 5 makes several exemptions from this prohibition, and among them the following:—

'(*a*) any steamship having a certificate of survey granted by the Board of Trade or any British Colonial Government, unless it appears from the certificate that it is inapplicable to the (particular) voyage.....or service....., or unless there is reason to believe that the steamship has, since the grant of the certificate, sustained injury or damage, or been found unseaworthy or otherwise inefficient;'.

"In other words, a certificate of the Board of Trade or of a British Colonial Government is treated *primâ facie* as equivalent to one granted after a survey under our own Act. A certificate granted under the Act continues in force for one year, unless some shorter period is stated in the certificate itself. I confidently submit that any of these certificates, whether obtained from the Board of Trade or from a British Colonial Government, or from the officers appointed in that behalf under our own Act, may safely be accepted, so long as they remain in force, as *primâ facie* proof of continuing seaworthiness. So far, then, as the hull and machinery are concerned, it is unnecessary that the surveyor appointed under the Emigration Act to examine a vessel holding such a certificate and tendered for the conveyance of emigrants should do more than satisfy himself by a general inspection, by examining the ship's log, and by such other enquiries as he

is able to make, that the hull and machinery have not sustained any substantial injury or otherwise become inefficient since the date of the certificate. Of course, he will not be relieved in any way from the duty of making a close personal examination of the space set apart for the emigrants, or of the ship's ventilation and equipments, such as the condensing apparatus, boats, fire-gear and tackle.

"There is one other respect in which I ask leave to propose an amendment of the law relating to emigration. Hon'ble Members will remember that emigration from British India is conducted upon two very different systems. There is, first, the very elaborate system laid down in the Act of 1883, which is applicable to the colonial possessions specified in the schedule to that Act; and then there is the system of free emigration to the Straits Settlements, regulated only by some very simple rules outside the Act, which by section 102 declared that a person who satisfies the definition of emigrating in all other respects shall not be deemed to emigrate if his destination is the Straits Settlements. Subsequently, by Act XXI of 1884, this exemption was extended so as to include 'any protected Native State adjoining the Straits Settlements' which the Governor General in Council may notify in the Gazette of India. A further field in the same direction has now been opened up to emigration from Southern India. This is British North Borneo, and it is proposed to carry on the emigration to that territory, as to the Native States just mentioned, through the agency of the Government of the Straits Settlements. My Bill will therefore include a further extension of the exemption contained in section 102 of the Act of 1883, as amended by Act XXI of 1884, so as to cover any colony to which emigrants, or persons who would be emigrants if they were going elsewhere out of India, are conveyed through the agency of the Government of the Straits Settlements."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also introduced the Bill.

The Hon'ble MR. HUTCHINS also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

[*Sir David Barbour.*] [31ST JULY,

INDIAN SALT ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved for leave to introduce a Bill to amend the Indian Salt Act, 1882. He said:—

"In 1882 the great inland customs line of India was abolished and the duties levied on sugar under the Inland Customs Act of 1875 were remitted. The duty on salt ceased to be collected by means of a customs line, and was levied at the places where the salt was produced or manufactured.

"The provisions of the Inland Customs Act of 1875 consequently became to a great extent obsolete, and that Act was repealed, and only so much of it as appeared to be required was re-enacted in the Indian Salt Act of 1882, which consolidated a number of enactments relating to salt.

"Although the inland customs line was abolished and the levy of duty on sugar and salt crossing that line consequently ceased, a preventive line, of minor importance was still kept up. This was the Indus preventive line, which lies along the upper portion of the river Indus in British territory, and which is intended to prevent the passage of the lightly taxed Kohat salt into the cis-Indus districts.

"It is impossible to say now whether the existence of this preventive line was overlooked in 1882, or whether it was hoped that it would be found possible to abolish it. However this may be, it has not been found possible to abolish the Indus line, and it has continued to exist up to the present time, although certain powers for the regulation of traffic and certain rights of search which are essential for the effective maintenance of the line had been taken away by the repeal of the Inland Customs Act of 1875.

"These powers had been exercised for many years before 1882, and they have been exercised since that year, although the legal basis on which they rested had been withdrawn. So long as these powers were exercised with the consent of the persons affected, or at any rate without any opposition on their part, no practical inconvenience arose. But it has now been brought to light by a decision in a Criminal Court that there is no longer a legal basis for the exercise of the powers in question, and that if the persons affected choose to object to their exercise they can no longer be put in force.

"It is therefore proposed to restore, so far as regards the Indus preventive line, such of the powers formerly given by the Inland Customs Act of 1875 as are necessary for the effective maintenance of the line.

1890.] [*Sir David Barbour.*]

"It has been found possible to make the provisions of the present Bill somewhat less stringent than those of the Act of 1875; and as it is hoped that we may be able to shorten the preventive line, and effect a useful reform, by abandoning the lower portion of the line and substituting a preventive line running westward from the Indus to the frontier, the necessary provision for this purpose has been made in the Bill."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also introduced the Bill.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 28th August, 1890.

S. HARVEY JAMES,

SIMLA; *The 1st August, 1890.*

Secretary to the Government of India, Legislative Department.

C. C. Press, Simla.—No. 210 L. D.—1-8-90.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 28th August, 1890.

PRESENT:

The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.A., *presiding.*
His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble R. J. Crosthwaite, C.S.I.
The Hon'ble Bábá Khem Singh Bedi, C.I.E.

PAPER CURRENCY ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Bill to amend the Indian Paper Currency Act, 1882, be taken into consideration. He said that the Bill was a very simple one, and merely provided for the substitution of the word "eighty" for "sixty" in section 19 of the present Act; it was, therefore, considered unnecessary to refer it to a Select Committee.

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill be passed. He said that the question with which the Bill dealt had been before the public for some time. It had been widely discussed and generally approved. When he introduced the measure he explained its object and the grounds upon which it was proposed to take power to increase the amount of the Paper Currency reserve which might be invested in Government securities. He did not think that any further remarks were necessary on the present occasion.

The Motion was put and agreed to.

INDIAN EMIGRATION ACT, 1883, AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved that the Bill to amend the Indian Emigration Act, 1883, be referred to a Select Committee consisting of the Hon'ble Sir Andrew Scoble, the Hon'ble Mr. Crosthwaite, the Hon'ble Bábá Khem Singh Bedi and the Mover, with instructions to report within one month.

The Motion was put and agreed to.

BIRTHS, DEATHS AND MARRIAGES REGISTRATION ACT, 1886, AMENDMENT BILL.

The Hon'ble MR. HUTCHINS also moved for leave to introduce a Bill to amend the Births, Deaths and Marriages Registration Act, 1886. He said:—

"The main object of this measure is to extend the time within which certain registers of births, baptisms, namings, dedications, deaths or burials, not now admissible to prove such occurrences, may acquire a status which will permit extracts from them to be received in evidence by following the prescribed procedure. Under Chapter V of the Act they may be submitted to the Registrar General in view to their being scrutinized by Commissioners, and if found apparently faithful and accurate they will be certified under the hands of the Commissioners. Any extract from a register so certified will under section 35 be available for the purpose of establishing the occurrence to which it relates.

"The time limited in the Act for taking advantage of this special procedure is one year from the date on which the Act might be brought into force, and, though the Act received the assent of the Governor General in March, 1886, it was not brought into operation till the first day of October, 1888. It was naturally thought that this period of a whole twelvemonth, in addition to the time which might elapse between the publication of the Act and its coming into force, would give ample opportunity to the custodians of old registers to become acquainted with the provisions of the Act, to consider whether or not their registers are already admissible under the general law, and if they had any doubt as to their admissibility to send them to the Registrar General in view to their being certified and obtaining an evidential value. But unfortunately the true import of this chapter of the Act does not seem to have been generally appreciated, and but few persons took advantage of its provisions until after the limited time, the first day of October 1889, had expired. It is therefore proposed to extend the time up to the first day of April next, or rather more than six months from the date at which the Bill which I am about to lay on the table may be expected to become law. The matter has already been explained in a circular letter issued from the Home Department on the 23rd July, 1889, and a further endeavour will now be made to bring it to the notice of all persons having the custody of old registers in such a shape as will be readily comprehended.

"Divested of all complications and technicalities, it may be simply stated in this way. Under section 35 of the Indian Evidence Act, extracts are only receivable if the registers have been kept, either (1) by a public servant in the discharge

of his official duty, or (2) by some other person in the performance of a duty specially enjoined by law. Registers which come under either of these categories are admitted even now, and will therefore derive no advantage from the special procedure provided by Chapter V ; and, indeed, as that chapter does not apply to registers which have been maintained under a special injunction of law, if any so kept are sent to a Registrar General he can do nothing but return them. Any person therefore having the custody of a register has merely to ask himself these two questions :—

" Were the entries in this register made by a public servant in the discharge of his official duty?

" If not, were they made under any special injunction of the law?

If they were not made either by a public servant as such, or under any special provision of law, then, if the custodian desires to obtain for them that evidential status without which his register will be mere waste paper, he must be careful to submit it to the Registrar General before the 1st April next.

" As the Act is to be amended in this respect I propose to take advantage of the opportunity to remove a doubt which has been felt in some quarters, or perhaps I should rather say in one quarter, whether it is competent to the Governor General in Council under section 33 as it now stands to appoint separate Commissioners for the several Provinces. For many reasons this will be a far more convenient course than to have a single body of Commissioners for the whole of British India and the territories outside British India to which the Act applies."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also introduced the Bill

The Hon'ble MR. HUTCHINS also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also moved, under rule 18 of the Rules for the Conduct of the Legislative Business of the Council of the Governor General, that the Bill be taken into consideration by the Council at its next meeting. It was, as he had already explained, of a very simple character, and he thought that it might be considered and passed at the next meeting of the Council.

The Motion was put and agreed to.

[*Sir David Barbour.*] [28TH AUGUST, 1890.]

INDIAN SALT ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Bill to amend the Indian Salt Act, 1882, be referred to a Select Committee consisting of the Hon'ble Sir Andrew Scoble, the Hon'ble Bábá Khem Singh Bedi and the Mover, with instructions to report within one month.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 11th September, 1890.

SIMLA;
The 29th August, 1890.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

G. C. Press, Simla.—No. 259 L. D.—29-8-90.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 11th September, 1890.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding.*
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.
The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.
The Hon'ble Sir C. A Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble R. J. Crosthwaite, C.S.I.
The Hon'ble Bábá Khem Singh Bedi, C.I.E.

BIRTHS, DEATHS AND MARRIAGES REGISTRATION ACT, 1886, AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved that the Bill to amend the Births, Deaths and Marriages Registration Act, 1886, be taken into consideration. He said:—

"This is a Bill which I introduced at the last sitting of the Council, and on my motion Hon'ble Members then agreed that it should be taken into consideration today. It comprises only two simple sections. The first extends till the first day of April next the time within which certain registers, which have been regularly kept but are not recognized by the law of evidence, may after suitable scrutiny acquire evidential value. I fully explained on the last occasion how this extension of the limited time had become necessary.

"The object and effect of the second section are to remove all doubt as to the power of the Governor General in Council to appoint separate Commissioners to scrutinize the registers of the several provinces, instead of one set of Commissioners for all the territory to which the Act applies.

[*Mr. Hutchins.*] [11TH AUGUST, 1890.]

"Local Governments have seen the Act as well as the explanatory remarks which I made a fortnight ago, and I understand that no objection has been made to the immediate passing of the measure."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 25th September, 1890.

SIMLA;
The 12th September, 1890.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

G. C. Press, Simla.—No. 284 L. D.—12-9-90.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 2nd October, 1890.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding.*
His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.
The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble R. J. Crosthwaite, C.S.I.
The Hon'ble Bábá Khem Singh Bedi, C.I.E.

CENSUS BILL.

The Hon'ble MR. HUTCHINS presented the Report of the Select Committee on the Bill to provide for certain matters in connection with the taking of the Census. He explained that the changes made in the Select Committee were not material and that it was not considered necessary that the Bill should be republished.

INDIAN EMIGRATION ACT, 1883, AMENDMENT BILL.

The Hon'ble MR. HUTCHINS also presented the Report of the Select Committee on the Bill to amend the Indian Emigration Act, 1883. He said that the Committee had reported in favour of the Bill as originally referred to them, but had introduced new sections amending so much of the Act of 1883 as required each emigrant to execute an agreement in triplicate. He would explain these amendments at length when moving that the Bill be taken into consideration, but it seemed right that he should now draw public attention to it, as it was a new matter. It had, however, been fully discussed two or three years ago, when all the authorities concerned were agreed as to what should be done. In view of this unanimity and of the fact that it was a matter of mere formal procedure, he did not think there was any necessity for republishing the Bill.

[*Mr. Crosthwaite; Sir David Barbour; Sir Andrew Scoble.*] [2ND OCTOBER,

NORTH-WESTERN PROVINCES AND OUDH BILL.

The Hon'ble MR. CROSTHWAITE presented the Report of the Select Committee on the Bill to provide for the better administration of the North-Western Provinces and Oudh and to amend certain enactments in force in those Provinces and in Oudh.

INDIAN SALT ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR presented the Report of the Select Committee on the Bill to amend the Indian Salt Act, 1882. He said that the Committee had made only a single verbal alteration in one section and was of opinion that the Bill might now be passed as it stood.

CRIMINAL PROCEDURE CODE, 1882, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE moved for leave to introduce a Bill to amend the Code of Criminal Procedure, 1882. He said :—

"By section 250 of the Criminal Procedure Code power is given to Magistrates, in certain cases, to award to persons, who have been made the victims of frivolous or vexatious complaints, compensation not exceeding fifty rupees in each case for the trouble and annoyance to which they have been subjected by such accusations. But the section as it stands extends only to summons cases; and the High Court of the North-Western Provinces has suggested that its scope should be extended so as to cover all cases triable summarily under Chapter XXII of the Code.

"The object of the Bill is to give effect to this suggestion, but it is considered that the value of the measure will be greatly impaired if the power to award compensation is limited to those Magistrates only to whom the exercise of summary jurisdiction is entrusted. It is therefore proposed to confer the power on Magistrates generally, in regard to the classes of cases which may be tried summarily, safeguarding its exercise, in the case of Magistrates of the second and third classes, by allowing an appeal against an award of compensation in all cases in which, if the accused had been convicted, an appeal would be admissible against the conviction. It is further provided that in all cases, before making an order for the payment of compensation, the Magistrate shall give the complainant an opportunity of showing cause against it, and shall place on record the objections urged against the order and his own reasons for making it. These precautions, it is believed, will prevent any abuse of the power.

1890.] [*Sir Andrew Scoble.*]

"Among the officers and authorities consulted about this Bill there is a general agreement that legislation in this direction is necessary and will be useful. Mr. Justice Muttusami Aiyar writes:—

'Frivolous complaints in petty cases are more numerous than they ought to be, and it is advisable to compensate the injured party at once, and thereby to check them effectually. In petty cases the injured party seldom considers it worth his while either to proceed under section 211 of the Indian Penal Code or to sue for damages.'

The Bombay Government reports:—

'The habit of making frivolous or vexatious complaints in Criminal Courts is common and increasing.'

"There can, I think, be no doubt that this is the case all over India. The Criminal Courts afford a completer and cheaper means of putting an adversary to shame and trouble than the Civil Courts, and are accordingly resorted to with greater frequency for this purpose. I have not therefore been surprised to find that proposals have been made to allow a summary award of compensation in cases of false charges generally in order to put a stop to this misuse of the criminal law. But the law already provides a more appropriate punishment for flagrant offences of this kind, and the desire to find a summary remedy for a growing evil ought not to lead the Legislature to affix to a serious crime a lower penalty than the law already awards. The operation of the Bill is accordingly limited to charges of the comparatively trivial offences which may be summarily dealt with and as to which it appears that the law has been set in motion for malicious or insufficient reasons."

The Motion was put and agreed to.

The Hon'ble SIR ANDREW SCOBLE also introduced the Bill.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 16th October, 1890.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

SIMLA;
The 3rd October, 1890.

NOTE.—The Meeting fixed for the 25th September, 1890, was subsequently postponed to the 2nd October, 1890.

G. C. Press, Simla.—No. 356 L. D.—3-10-90.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 16th October, 1890.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding.*
The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.
The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble R. J. Crosthwaite, C.S.I.
The Hon'ble Bábá Khem Singh Bedi, C.I.E.

CENSUS BILL.

The Hon'ble MR. HUTCHINS moved that the Report of the Select Committee on the Bill to provide for certain matters in connection with the taking of the Census be taken into consideration. He said:—

"Substantially this Bill remains just as it was drafted when I introduced it last July. A number of small alterations have been made by the Select Committee, but all these have been enumerated in its Report, and I think there are only four or five which require some further short explanation at my hands.

"One of these amendments occurs in the first section. As originally drafted, only four clauses, those which now appear as the second, third and last two sections, were to be applied at once to the whole of British India; Local Governments were left to extend the other sections or not as they thought fit. The Committee considered this an unnecessary and unreasonable distinction. The law is one which ought to be in force in all India even though there are very few places in which it is likely that effect will have to be given to the penal provisions. When a census-officer has to fill up a schedule, he must have power everywhere to ask the appropriate questions and to demand answers; and, when a schedule is handed to a householder to be filled in, there ought to be the same sanction in every

province to compel him to do what is needful. Most of the other clauses are merely permissive, and they will not be made compulsory by their extension to the whole country

"The second provision to which I would refer is sub-section (*d*) of section 4 At the instance of the Madras Government the word 'Secretary' has here been inserted, and the same Government proposed to add to 'sarais, hotels,' &c., the words 'choultry and cart-stand'. The word 'cart-stand,' however, would not be understood in other parts of India, and it appeared to the Committee that the term 'sarai' includes everything of the nature of a choultry or cart-stand (as understood in Madras) to which it would ever be desirable that the provisions of section 4 should be applied. Sarai is defined in Act XXII of 1867 as meaning any building used for the shelter and accommodation of travellers, and as including, in any case in which only part of a building is used as a sarai, the part so used of such building.

"The additions made to section 5 hardly require explanation. Various Local Governments have suggested that there are certain classes of persons or local bodies in their respective territories, over and above those originally specified in the section, who may with advantage be required to give assistance towards the taking of the census. These have accordingly been inserted.

"Section 6 empowers a census-officer to ask all such questions as by instructions issued in this behalf by the Local Government, and published in the official Gazette, he may be directed to ask. The Judges of the High Court at Calcutta have expressed an opinion that the questions ought to be prescribed in the Act itself and not left to the Local Government; but this is not the course followed in British legislation. The Census Acts for both England and Scotland allow such questions as may be directed in instructions issued by the Secretary of State and as are necessary for the preparation of the schedules. The instructions vary slightly in different provinces of this vast country, having to be adapted to local circumstances and prejudices. They have all been carefully settled, and show that the prescribed questions are really necessary for the preparation of the schedules. In this connection I may mention that, following a very general recommendation, the exemption of a woman from the necessity of giving her husband's name has been extended in section 7 so as to cover the name of any other person whose name custom may forbid her to mention.

"Lastly, clause (*e*) of section 10 prescribes a punishment for the removal or obliteration before 31st March, 1891, of any letters, marks or numbers affixed to

premises for the purposes of the census. It was proposed to insert here the words 'without sufficient cause,' but we came to the conclusion in Committee that section 11 (*3*), as now revised, will afford all necessary protection against unreasonable prosecutions. No prosecution under the Act can now be instituted without the special leave of the Local Government or of some officer specially authorised by the Local Government in this behalf. We may rest assured that such leave will not be given in respect of any act for which the accused person is able to show a sufficient excuse."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

INDIAN EMIGRATION ACT, 1883, AMENDMENT BILL.

The Hon'ble MR. HUTCHINS also moved that the Report of the Select Committee on the Bill to amend the Indian Emigration Act, 1883, be taken into consideration. He said:—

"This Bill as referred to the Select Committee consisted of three clauses, now numbered as sections 5, 7 and 8. The Council will remember that there were two objects with which the Bill had been prepared. The first was to do away with the necessity for an entirely fresh survey of the hull and machinery of a duly certified steamer, whenever it is proposed to employ it for the purpose of carrying emigrants. The second was to place emigration to British North Borneo, carried on through the agency of the Government of the Straits Settlements, on the same footing as emigration to those Settlements and the adjoining Native States. The clauses dealing with these matters have been generally approved, and the Committee has retained them exactly as they were drafted, and recommends that they may be passed into law.

"Of the other sections which the Committee has added to the Bill, the first and the last merely correct two clerical errors which have been discovered in the Act of 1883; these require no further explanation. The remaining sections deal with quite a new matter, and when I presented the Committee's Report a fortnight ago I briefly drew attention to this point and promised to explain it more in detail.

"As long ago as 1887 it was reported by the Governments of Madras and Bengal, which have most to do with emigration, that much trouble and delay are caused by that part of the Act of 1883 which requires an agreement to be pre-

pared in triplicate for each intending emigrant. The Emigration Agents stated that the third copy is not required for transmission to the Colonies, and that a copy of the particulars registered under section 31 is sufficient for their purposes. And as far as the Protector is concerned, when 40 or 50 emigrants are registered on the same terms and at the same time, it is obviously more convenient for him to have a single list of them than 40 or 50 separate agreements. In these circumstances new sections 2, 3, 4 and 6 have been introduced into the Bill as revised, providing that agreements shall be executed in duplicate instead of in triplicate, and that any number of intending emigrants appearing with the same recruiter before the Registering-officer or Protector at the same time, and desiring to emigrate on the same terms to the same country, may execute for record in the Protector's office a single instrument of agreement instead of as many such instruments as there are intending emigrants.

"These modifications of the law will not, in the Committee's opinion, involve any reasonable ground for complaint respecting the procedure under the Act as to the execution of agreements. Each emigrant will still receive for his own use a copy of his own separate agreement. The Protector will have a complete record of each man's contract. The Emigration Agents will get all such particulars regarding each registered emigrant as are really required. But the time and trouble now spent in preparing triplicate engagements will be saved, and the Protector and the Agents will be relieved of the custody of many cumbrous and unnecessary documents. Under section 31 each emigrant has to be separately examined apart from his recruiter, and it is only after he has satisfied the Registering-officer that he is going willingly and understands what he is about, that he can be registered. The execution of the contract takes place subsequently. I think therefore that there can be no risk in allowing it to be executed by several emigrants in batches.

"Both the Governments concerned have seen the sections since I presented the Committee's Report and their approval has been signified to us by telegraph. The Madras Government has raised one objection under the impression that each emigrant would not get a copy of his own agreement, but this, as I have stated already, will not be the case."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

1890.] [*Sir David Barbour; Mr. Crosthwaite.*]

INDIAN SALT ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Report of the Select Committee on the Bill to amend the Indian Salt Act, 1882, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill, as amended, be passed. He said that he had already explained the nature of the measure, which merely continued the existing practice. The Bill had met with no opposition on the part of the public, and the Select Committee had made only a verbal alteration in a single sentence, and reported that the Bill might now be passed as it stood. He need not therefore trouble the Council with any further remarks.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES AND OUDH BILL.

The Hon'ble MR. CROSTHWAITE moved that the Report of the Select Committee on the Bill to provide for the better administration of the North-Western Provinces and Oudh and to amend certain enactments in force in those Provinces and in Oudh be taken into consideration. He said:—

"The Bill has been generally approved and the only provisions which have been objected to are those which relate to appeals under the Oudh Rent Act, 1886. As that Act now stands, there are five grades of Courts of Revenue which alone can take cognizance of suits under the Act. These Courts are the Assistant Collector of the second class, the Assistant Collector of the first class, the Collector, the Commissioner and the Judicial Commissioner. The rule as regards appeals may be stated generally as follows. First appeals lie from the decisions of Assistant Collectors of the second class, to the Collector; from the decisions of Assistant Collectors of the first class and Collectors, to the Commissioner; and from the decisions of the Commissioner, to the Judicial Commissioner. Second appeals, when allowed by law, lie to the Judicial Commissioner. It is further provided in section 119 of the Act that the original or appellate decrees of a Commissioner or a Collector in suits of a certain description and of a value not exceeding one hundred rupees shall be final, unless a question of right to enhance or vary the rent of a tenant, or a question relating to a title to land or to an interest in land, has been determined by the decree or order. The Bill

as introduced proposed to make the Board of Revenue the principal Court of Revenue in the place of the Judicial Commissioner: to divide, after the manner of the North-Western Provinces Rent Act, 1881, suits under the Oudh Rent Act into two classes, in one of which the ultimate Court of Appeal should be the Board of Revenue, and in the other the Judicial Commissioner. In the former class of suits it was proposed that appeals should lie from the Assistant Collector of the second class, to the Collector, and from the Assistant Collector of the first class and the Collector, to the Commissioner. There was to be no second appeal from the appellate decree or order of a Collector, but from the Commissioner a second appeal was to lie to the Board if the Commissioner reversed or varied the decree or order of the Court of first instance. In the latter class of suits, that is to say, the class cognizable by the Judicial Commissioner, the decisions of Collectors and Assistant Collectors of the first class were to be final, unless the value of the suit exceeded one hundred rupees, or a question of right to enhance or vary the rent of a tenant, or a question relating to a title to land or some interest in land, had been determined in the suit, in which case an appeal would lie to the District Judge or the Judicial Commissioner according to the value of the suit. It was also proposed by section 47 of the Bill to enact a provision conferring on the Board a power to call for the record of any suit in which the decree or order was not appealable, and to revise, if necessary, the decree or order. Thus, speaking generally, the Bill proposed to transfer from the Judicial Commissioner to the Board the final jurisdiction in a large class of suits, and to impose further restrictions on the right of appeal, but to compensate for this restriction by giving the Board an extensive power of revision.

"On further consideration the Lieutenant-Governor was of opinion that there were serious objections to the principle of restricting the right of appeal and at the same time making all unappealable cases open to revision by the Board. His Honour considered that the Board of Revenue was right in saying that 'the result of declaring the orders and decisions of Assistant Collectors of the first class not open to appeal is not really to make those orders final, but to substitute an informal for a formal appeal.' 'Each application for review,' he remarks, 'necessitates calling for, and consideration of, the file of the lower Court, even though in the end the application may be rejected.' The result of the system of barring appeals and allowing instead a revision by the Board of Revenue appears to be practically this, that disappointed suitors who cannot appeal apply to the Board for a revision of their cases, and the Board is thus led to spend in considering and revising petty cases time which might be more profitably employed. On

the other hand, objection was taken by the Oudh Bar, the Talukdars and others to the proposed restriction of the right of appeal, and it was urged that Assistant Collectors of the first class in Oudh were not qualified as regards knowledge or experience to pass unappealable decrees. His Honour was accordingly of opinion that the section of the Bill conferring the power of revision on the Board should be omitted, and that the right of appealing from decrees and orders under the Rent Act should be enlarged. Sir Auckland Colvin proposed that, subject to the provisions of the Code of Civil Procedure, a first and second appeal should be allowed in all cases, subject to this exception, that there should be only one appeal from the original decree or order of a Collector in a suit of the class in which the Board of Revenue was to have jurisdiction and that that appeal should be allowed only on a question of law. His Honour also proposed that second appeals from the appellate decrees and orders of the Collector should lie to the Commissioner, as the Board would not be able to dispose of them with the promptitude required.

"These proposals, my Lord, have been adopted by the Select Committee after careful consideration. They do not appear to be open to objection, except as regards the proposal to divide the jurisdiction between the Revenue and Civil Courts, and against this proposal the Oudh Talukdars and others have advanced objections which, it must be allowed, have weight. It is said that the appellate system proposed is complicated, and therefore likely to cause trouble to the agricultural classes with whom the Act has to deal. It is, moreover, inexpedient to have two or more Courts of second appeal to decide finally questions of law arising under one Act. There is a probability that the different Courts will not always take the same view of the law, and it is more convenient to the people to have one Court of final appeal in all cases. His Honour the Lieutenant-Governor is, however, of opinion that it is most important that the Board of Revenue should be given the jurisdiction proposed. 'Experience,' he says, 'has incontestably shown that no provisions in Act XVIII of 1873 (the North-Western Provinces Rent Act, 1873) have worked better than those by which the jurisdiction over applications was in the North-Western Provinces transferred from the Civil to the Revenue Courts. It is in cases similar to applications in the North-Western Provinces that the present Bill gives a second appeal to the Revenue Board. It may safely be said that the knowledge gained by this means of matters affecting agricultural tenures and the condition of the agricultural body has proved invaluable to the superior revenue-authorities, and that these provisions have completely fulfilled the objects with which they were introduced

by the Legislature of 1873.' With regard to the objection that the different Appellate Courts may give conflicting decisions as to the law, His Honour, in reply to the British Indian Association of Oudh, remarks that no conflict of rulings has resulted under similar conditions in the neighbouring province.

"It must be admitted, I think, that the experience in matters relating to the agricultural classes which the Board gains by supervising the Rent Courts is of great advantage to the revenue-administration, while, on the other hand, the knowledge acquired by the Board in its executive capacity enables it the better to understand the questions which come before it for judicial decision in suits between landlords and tenants. It is a case in which the union of executive and judicial functions is calculated to work well in the interests of both suitors and the agricultural classes generally. The Local Government was also of opinion that there was a tendency in the Judicial Commissioner's Court to regard appeals under the Rent Act as business of less importance than the civil and criminal cases; that a Revenue Court would both be able to dispose of rent appeals at once, and would in the ordinary course of its work consider the early disposal of such appeals as a matter of paramount importance. The Committee, after fully considering the question, decided to be guided by the strong opinion expressed by His Honour the Lieutenant-Governor, supported, as it is, by that of the majority of the experienced officers who have been consulted. Accordingly the provisions regarding the division of the appellate jurisdiction between the Board and the Judicial Commissioner have been retained in the Bill, and the sections regarding appeals have been amended in accordance with the recommendations of the Local Government.

"To prevent as far as possible the difficulties and delays which are apt to arise with respect to questions of jurisdiction in rent cases, especially where appeals lie in one class of those cases to Revenue Courts and in other classes to Civil Courts, the Select Committee has, with the concurrence of the Lieutenant-Governor, inserted in the Oudh Rent Act sections taken from the North-Western Provinces Rent Act, 1881. The provisions of these sections will, it is hoped, lead to the prompt decision of questions as to jurisdiction, and prevent the mischief of suitors being referred by the Revenue to the Civil Courts and then by the Civil to the Revenue Courts.

"Of the minor amendments made in the Bill I need only notice the following. First, by sections 28 to 31, both inclusive, of the Bill as now amended we have, at the suggestion of the Local Government, made the Board of Revenue

the Court of Wards for Oudh. The Deputy Commissioner is now the Court of Wards for his district, but it is considered that, as the revenue-administration of Oudh is now to be transferred to the Board, that body should be the Court of Wards for Oudh as it is for the North-Western Provinces.

"Secondly, with regard to the Civil Courts in Oudh, we have, on the recommendation of the Local Government, provided in section 39 of the Bill as now amended that appeals from Subordinate Judges shall in suits of a value exceeding five thousand rupees lie to the Judicial Commissioner. The rule will thus be in accordance with the rule contained in the Bengal, North-Western Provinces and Assam Civil Courts Act as to appeals from Subordinate Judges. By section 40 of the Bill section 24 of the Oudh Civil Courts Act has been amended so as to enable the Local Government to invest Munsifs with the powers of a Court of Small Causes in suits not exceeding one hundred rupees in value. As that Act now stands, Munsifs in Oudh can only be invested with such powers in suits not exceeding fifty rupees, and it is considered that it is expedient that the law in this respect should be the same as that in force in Bengal and the North-Western Provinces.

"As strong representations have been made with respect to the amendment of the law regarding second appeals from the Civil Courts in Oudh, I may mention that this matter is being considered with reference to the constitution of the Judicial Commissioner's Court, and has not, therefore, been dealt with in the Bill."

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITE also moved that in section 35 of the Bill, as amended, for the words "the same Act" the words "the latter Act" be substituted. He said that the amendment was merely a verbal one and required no explanation.

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITE then said:—"I propose, with Your Excellency's permission, to move the next two amendments which stand on the list together, as they both relate to the same matter. The first amendment is that after section 35 of the Bill, as amended, the following section be inserted in the Bill as section 36, namely:—

New section substituted for section 8, Act IV of 1878.

'36. For section 8 of the Oudh Local Rates Act, 1878, the following shall be substituted, namely:—

"8. (*1*) Suits for the recovery from co-sharers, under-proprietors, permanent lessees or tenants as aforesaid of any sum on account of any such rate, and suits on account of illegal exaction of such rate, or for the settlement of accounts, shall be cognizable by the Courts of Revenue in Oudh as though such suits were suits mentioned in section 108, clause (*15*), (*16*) or (*17*), of the Oudh Rent Act, 1886.

Jurisdiction in suits as to rates.

"(*2*) Appeals from decisions in such suits shall be cognizable in accordance with the provisions of the said Act as though they were decisions in suits mentioned in section 108, clause (*15*), (*16*) or (*17*), of the said Act".';

and that the numbering of the sections in the Bill be amended accordingly.

"The second amendment is that after section 59 of the Bill, as amended, the following section be inserted as section 61, namely:—

'61. In section 16 of the North-Western Provinces and Oudh Kanungos and Patwaris Act, 1889, there shall be inserted after the word and figures "section 108" the word and figure "clause (*2*)".;

Amendment of section 16, Act IX of 1889.

and that the numbering of the sections in the Bill be amended accordingly.'

The object of these two amendments is to bring the law in Oudh regarding the recovery of rates under the Oudh Local Rates Act and the Kanungos and Patwaris Act into conformity with the law in the North-Western Provinces. Suits for the recovery of these rates are both in Oudh and the North-West made cognizable as suits under the Rent Act, and the amendments are intended to place these suits under the same class of rent-suits in both provinces, namely, under the class in which the appeal lies to the Judge and the High Court. It may cause inconvenience and error if the appeal in Oudh lies to the Board while in the North-West it lies to the District Judge. The amendments are approved of by the Local Government"

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITE also moved that for section 61 of the Bill, as amended, the following section be substituted as section 63, namely:—

"63 (*1*) Notwithstanding anything in section 152 of the North-Western Provinces Rent Act, 1881, or in section 128 of the Oudh Rent Act, 1886, the Board of Revenue of the North-Western Provinces and Oudh shall for the disposal of cases under those Acts sit in such place or places in the North-Western Provinces or Oudh as the said Lieutenant-Governor and Chief Commissioner may, by notification in the official Gazette, appoint in respect to cases under either of those Acts.

Place where the Board may sit

"(*z*) For the disposal of cases other than those referred to in sub-section (*t*) the said Board may, subject to the orders of the said Lieutenant-Governor and Chief Commissioner, sit in any place in the North-Western Provinces or Oudh that the Board thinks fit."

He said:—"Section 53 of the Bill as introduced, following the North-Western Provinces Land-revenue Act, provided that the Board of Revenue might, subject to the orders of the Lieutenant-Governor, sit in any place in the North-Western Provinces or Oudh. This section was amended in Committee by section 61 of the amended Bill, as it was considered that, having regard to the extensive jurisdiction which it is proposed to confer on the Board, the place or places where the Board should sit for the disposal of business should be fixed by the Local Government, so as to secure that the convenience of the public should be sufficiently consulted. His Honour the Lieutenant-Governor, however, is of opinion that it will not be practicable, considering the nature of the business which the Board has to dispose of and the fact that the Board has to proceed on tour in the cold weather, to fix places where alone business can be transacted. I think that as regards revenue work it will be best to allow the Board to sit where it thinks fit, subject to the orders of the Lieutenant-Governor. It would be found inconvenient if the Board, having made a local inquiry in a settlement case, for instance, was compelled to proceed to some other place in order to record a decision. With regard, however, to rent cases it was considered that the Board, being a Court of second appeal, and having only to decide questions of law, should sit at some place or places convenient to the public and of which the public have sufficient notice. It should be possible for suitors who wish to have a question of law decided by a Court of final appeal to have the case argued by counsel and regularly heard. It is proposed therefore to amend section 61 of the Bill so as to provide that the Local Government shall fix the place or places where the Board is to sit for the disposal of cases under the Oudh or North-Western Provinces Rent Act, and that for the disposal of all other cases the Board may, subject to the orders of the Lieutenant-Governor and Chief Commissioner, sit at such place as the Board thinks fit."

The Hon'ble SIR CHARLES ELLIOTT said:—"I should like to say one word with regard to the section which it is proposed to substitute, I see no objection to it, and I understand that it completely meets the objection raised by the Lieutenant-Governor; but I should like it to be understood that the meaning of this section is not that it is feared by the Council that the Board of Revenue would, if it were not prevented by any law, sit in such places as would be incon-

venient to the public or the suitors engaged in the appeals heard by them, and that the section in question is meant more to legalise and proclaim an habitual practice than to imply restraint by law on anything which they would be likely to do."

The Motion was put and agreed to.

The Hon'ble MR. CROSTHWAITE then moved that the Bill, as now amended, be passed.

The Motion was put and agreed to.

REPEALING AND AMENDING BILL.

The Hon'ble SIR ANDREW SCOBLE moved for leave to introduce a Bill to repeal certain obsolete enactments and to amend certain other enactments. He said:—

"It is one of the functions of the Legislative Department from time to time to publish editions of the Acts and Regulations in force in British India, so that officials and the public generally may have in a compact form the body of statute law applicable to British India generally, or to particular Provinces, revised and corrected so as to show the latest amendments introduced by the various Legislative Councils. In the course of preparing these editions it is found that some enactments have become spent by lapse of time, or inapplicable by change of circumstances, and that, to use Lord Hobhouse's expression, 'there is dead matter in the statute-book which may advantageously be removed.' It also happens that obvious errors are discovered which it is desirable not to perpetuate.

"The Bill which I now ask leave to introduce has for its object to correct these errors and to get rid of these superfluities. It has been prepared by Mr. Wigley, whose work has been carefully checked by Mr. Harvey James, and, so far as I am able to judge, will not remove from the Indian statute-book anything of living importance, while I hope it will facilitate the production of a more accurate edition of the Acts and Regulations than is now possible."

The Motion was put and agreed to.

1890.] [*Sir Andrew Scoble.*]

The Hon'ble SIR ANDREW SCOBLE also introduced the Bill.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned *sine die*.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

SIMLA;
The 17th October, 1890.

G. C. Press, Simla.—No. 408 L. D.—17-10-90—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Government House on Friday, the 12th December, 1890.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding.*
His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.
The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.
The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble R. J. Crosthwaite, C.S.I.
The Hon'ble Sir Alexander Wilson, Kt.
The Hon'ble F. M. Halliday.
The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.
The Hon'ble Nawab Ahsan-Ulla, Khan Bahádur.
The Hon'ble Sir Romesh Chunder Mitter, Kt.

NEW MEMBERS.

The Hon'ble NAWAB AHSAN-ULLA, KHAN BAHADUR, and the Hon'ble SIR ROMESH CHUNDER MITTER took their seats as Additional Members.

BANKRUPTCY AND INSOLVENCY BILL.

The Hon'ble SIR ANDREW SCOBLE moved that the Hon'ble Mr. Crosthwaite, the Hon'ble Sir Alexander Wilson and the Hon'ble Sir Romesh Chunder Mitter be added to the Select Committee on the Bill to amend and consolidate the Law of Bankruptcy and Insolvency in British India.

The Motion was put and agreed to.

[*Sir Andrew Scoble; Mr. Hutchins.*] [12TH DEC., 1890.]

INDIAN FACTORIES ACT, 1881, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE also moved that the Hon'ble Mr. Bliss be added to the Select Committee on the Bill to amend the Indian Factories Act, 1881.

The Motion was put and agreed to.

INDIAN EVIDENCE ACT, 1872, AND CODE OF CRIMINAL PROCEDURE, 1882, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill to amend the Indian Evidence Act, 1872, and the Code of Criminal Procedure, 1882, be referred to a Select Committee consisting of the Hon'ble Mr. Hutchins, the Hon'ble Mr. Crosthwaite, the Hon'ble Sir Romesh Chunder Mitter and the Mover.

The Motion was put and agreed to.

CATTLE-TRESPASS ACT, 1871, AMENDMENT BILL.

The Hon'ble MR. HUTCHINS moved that the Hon'ble Mr. Halliday and the Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar be added to the Select Committee on the Bill to amend the Cattle-trespass Act, 1871.

The Motion was put and agreed to.

INDIAN CHRISTIAN MARRIAGE ACT, 1872, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE moved that the Bill to amend the Indian Christian Marriage Act, 1872, be referred to a Select Committee consisting of the Hon'ble Mr. Hutchins, the Hon'ble Mr. Crosthwaite, the Hon'ble Mr. Bliss and the Mover.

The Motion was put and agreed to.

CRIMINAL PROCEDURE CODE, 1882, AMENDMENT BILL.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill to amend the Code of Criminal Procedure, 1882, be referred to a Select Committee consist-

ing of the Hon'ble Mr. Hutchins, the Hon'ble Mr. Crosthwaite, the Hon'ble Sir Romesh Chunder Mitter and the Mover.

The Motion was put and agreed to.

REPEALING AND AMENDING BILL.

The Hon'ble SIR ANDREW SCOBLE also moved that the Bill to repeal certain obsolete Enactments and to amend certain other Enactments be referred to a Select Committee consisting of the Hon'ble Mr. Crosthwaite, the Hon'ble Mr. Bliss, the Hon'ble Sir Romesh Chunder Mitter and the Mover.

The Motion was put and agreed to.

The Council adjourned to Friday, the 19th December, 1890.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 12th December, 1890.

Government of India Central Printing Office,—No. 674 L. D.—4-3-91.—300.—A. E. deS.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 19th December, 1890.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding.*

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

The Hon'ble Lieutenant-General Sir G. T. Chesney, K.C.B., C.S.I., C.I.E., R.E.

The Hon'ble Sir A. R. Scoble, Q.C., K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Sir C. H. T. Crosthwaite, K.C.S.I.

The Hon'ble R. J. Crosthwaite, C.S.I.

The Hon'ble Sir Alexander Wilson, Kt.

The Hon'ble F. M. Halliday.

The Hon'ble Rao Bahádur Krishnaji Lakshman Nulkar, C.I.E.

The Hon'ble Nawab Ashan-Ulla, Khan Bahádur.

The Hon'ble Sir Romesh Chunder Mitter, Kt.

MERCHANT SHIPPING ACT, 1880, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved for leave to introduce a Bill to amend the Indian Merchant Shipping Act, 1880. He said:—

"Under the Indian Merchant Shipping Act of 1880 the Masters of British ships are required to mark on their ships, by means of discs, the maximum load-line in salt water to which it is intended to load such ships.

"The position of the maximum load-line in salt water is, however, under that Act left to the option of the Masters, subject to restrictions regarding the retention for certain periods of the discs by which the load-line has been marked.

"The Indian Merchant Shipping Act of 1880 follows in this respect the provisions of the English law which were in force when the Act of 1880 was passed. A very important change in the law has, however, been made by

the English Merchant Shipping Act of 1890. The position of the disc which indicates the maximum load-line is no longer left to the discretion of the Masters of the ships; and the disc must now be placed at such distance below the deck line as may be approved by the Board of Trade, provided that the position of the disc shall be fixed in accordance with the table framed by the Load-Line Committee in 1885.

"Under any circumstances, it would be desirable that the law in reference to the fixing of the position of the maximum load-line should be the same in India as in England, and the English Act of 1890 will in fact apply to ships registered in India at the expiration of 12 months from the passing of the Act.

"The Bill which I propose to introduce has for its object the assimilation of the Indian to the English law in regard to the maximum load-line, and under it the maximum load-line will be fixed, as nearly as may be, in accordance with the Act of 1890, and the instructions of the Board of Trade issued under that Act. When the Bill has been passed it will be lawful to declare by an order in Council that any load-line fixed and marked under the Indian law, and any certificate given in accordance with that law, shall have the same effect as if it had been fixed, marked or given under the provisions of the English Act of 1890. There is at present another Bill before the Council which deals with the Merchant Shipping Law and I hope that it will be found possible to amalgamate that Bill with the one which I now propose to introduce. The present Bill has been introduced as a separate measure in order to prevent delay and to give greater prominence to the change which is being made than would be obtained by merely instructing the Select Committee to add the necessary provisions to the Bill which was introduced last year, and which is still before the Council."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also introduced the Bill.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Fort St. George Gazette, the Bombay Government Gazette, the Calcutta Gazette and the Burma Gazette in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

ACT X OF 1841 AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR also moved for leave to introduce a Bill to amend Act X of 1841 (*Registration of Ships*). He said:—

"The tonnage of vessels registered under Act X of 1841 is ascertained by methods based on those prescribed by the English Law which was in force at the time when Act X of 1841 was framed.

"These methods have since been superseded by the English Merchant Shipping Act of 1854 and by the Merchant Shipping (Tonnage) Act of 1889.

"It is desirable on general grounds that the rules for the ascertainment of register tonnage should, so far as practicable, be the same in India and in the United Kingdom. In cases where dues are levied on the register tonnage there would in practice be inequality in the treatment of different classes of ships, all owned by British subjects, if the register tonnage of British and British Indian ships were not ascertained by the same methods.

"The Bill which I propose to introduce is very short, and has for its object to secure uniformity in the methods of ascertaining register tonnage."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also introduced the Bill.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Fort St. George Gazette, the Bombay Government Gazette, the Calcutta Gazette and the Burma Gazette in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 2nd January, 1891.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 19th December, 1890.

Government of India Central Printing Office.—No. 393 L. D.—19-12-90.—308.—Jos. D'C.